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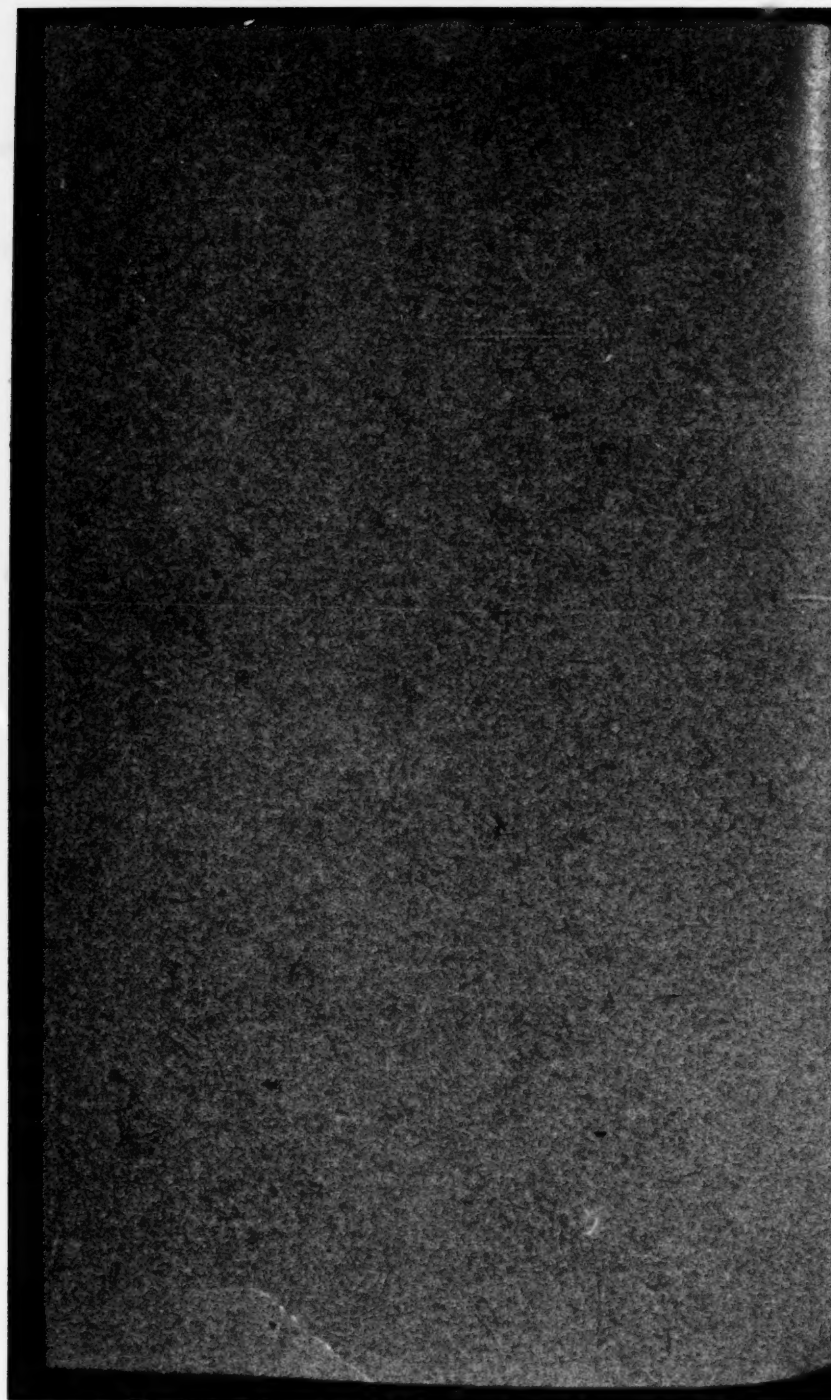
THE UNITED STATES

APPEAL FROM THE COURT OF PRIVATE LANDS

FILED OCTOBER 10, 1900

(15708)

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(15,708.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 181.

SANTIAGO AINSA, ADMINISTRATOR OF THE ESTATE OF
FRANK ELY, DECEASED, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

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Transcript on Appeal.

UNITED STATES OF AMERICA, }
Territory of Arizona, } ss :

UNITED STATES, Plaintiff and Appellee, }
vs. }
 SANTIAGO AINSA, Adm'r, etc., *et als.*, } San José de Sonoita Private
 Defendants and Appellants. } Land Claim.

Be it remembered that heretofore, to wit, on the 19th day of October, 1892, the United States, by its attorney, Matt. G. Reynolds, Esq., filed in the office of the clerk of the court of *probate* land claims, at Santa Fé, in the Territory of New Mexico, a petition; which petition is in the words and figures following, to wit:

2 UNITED STATES OF AMERICA, ss :

In the Court of Private Land Claims, Santa Fé District, Sept., 1892.

THE UNITED STATES OF AMERICA, Plaintiff,

vs. }
 SANTIAGO AINSA, Administrator of the Estate of Frank Ely, Deceased; Rollin Richardson, Don A. Sanford, Wm. S. Fleming, }
 C. C. Watkins, Defendants. }

San Jose de Sonoita Claim.

To the chief justice and associate justices of the court of private land claims, sitting at Santa Fé, New Mexico :

Comes now the United States, by its attorney, under the direction and order of the Attorney General of the United States, the head of the Department of Justice, and presents this petition, and, informing the court, says :

That he is informed and believes, and so charges, that Santiago Ainsa, administrator of the estate of Frank Ely, deceased, who resides at the city of Tucson, Arizona, claims to be the owner through mesne conveyances of a large track of land in the Territory of Arizona, known and called the "Rancho de San Jose de Sonoita,"
 3 about fourteen miles long and about two miles wide, by virtue of a grant made on or about the — day of —, to his intestate's grantors by officers of the Republic of Mexico authorized by the laws and usages of that Republic so to do, at a time when said lands were a part of said Republic, and afterwards ceded to the United States by what is known as the "Gadsden purchase" of lands from said Republic by the United States.

He claims that by said grant he acquired a fee-simple title to the lands so granted, and that his title was complete and perfect at the date when the United States acquired sovereignty over the same.

That he has not voluntarily come into said court under the pro-

visions of "An act to establish a court of private land claims and provide for the settlement of private land claims in certain States and Territories" and for a consideration of such title according to the provisions of said act.

He says that neither Ainsa or his intestate or any grantor from whom they derive title have ever been in the possession of or have occupied the lands so claimed by them, and they do not now.

That the lands claimed by them as aforesaid are not now -or have they ever been designated by occupation or segregated from other lands by marks on the ground, by fence, monument, or other means of designation; that the boundaries of the land claimed are open to question, and that the location, extent, and boundaries of the lands are uncertain and indefinite.

That, as their location and extent are uncertain, a more certain description of the lands claimed by said Ainsa as aforesaid cannot be alleged or set out here.

4 He says that the title to the lands so claimed by said Ainsa, administrator aforesaid, by virtue of such grant is open to question, and he says that the said grant is invalid and void, if any he has purporting to so grant and convey lands as aforesaid to said intestate's grantors, because the same was not made according to law then in force or by officers or persons authorized by law to alienate, sell, or convey the public lands in the then Republic of Mexico.

He says that at the date the United States acquired sovereignty over the territory which embraces said lands said lands so claimed were not located nor were the title papers upon which the said claim was then based recorded in the archives of Mexico.

He says that a portion of the lands so claimed as aforesaid were many years ago surveyed by the proper officers of the United States and opened for settlement and entry by citizens of the United States, and thereupon divers persons, under and by virtue of said laws, entered upon said lands and reclaimed the same by building houses and fences and constructing irrigating ditches, and have themselves or by their grantors continued in the peaceable enjoyment and possession of the same ever since, and, having complied with the land laws, patents were issued to such persons by the United States and the said lands were and ever since have been so occupied, possessed, and enjoyed by persons holding under said patents.

5 That Rollin R. Richardson now holds and occupies the north half of the northeast quarter of section 13 and the south half of the southeast quarter of section 12, in township No. 22 south, of range 15 east of the Gila and Salt River base line and meridian, having by several mesne conveyances acquired the title to the same from persons holding patents from the United States.

And he says that C. C. Watkins so holds and occupies the southeast quarter of section 8, in township 22; and he says that Don A. Sanford so holds and occupies the northeast quarter of section 30, south one-half of southwest quarter and south one-half of southeast quarter of section 20, and southeast quarter of section 21, and

northwest quarter of northeast quarter and northeast quarter of northwest quarter of section 28, the south one-half and northeast quarter of southeast quarter of section 21, N. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of section 22, N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of section 22, S. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of section 15, S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of section 14, S. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ section 6, S. W. $\frac{1}{4}$ of section 5, all in said township 22.

And the said Wm. S. Fleming so holds and occupies the N. E. $\frac{1}{4}$ of section 7 and the S. E. $\frac{1}{4}$ of section 6, township 22 south, range 15 aforesaid.

That all of said lands so patented by the United States are within the said claimed limits of the lands claimed by said Ainsa, administrator as aforesaid.

He therefore prays that the court may order and direct
6 that such notice as to the court may seem reasonable and proper be given to defendants of this petition.

And that defendant Ainsa, administrator as aforesaid, be ruled to answer this petition, and that he be particularly ruled to produce the title papers upon which he has based his claim to lands called the Rancho de San Jose de Sonoita and to file a copy of the same with his answer hereto, and that he also be required to produce and file a map of the lands claimed by him.

And that defendants Richardson, Fleming, Watkins, and Sanford be ruled to answer this petition also and disclose to the court their muniments of title.

That the title to said lands be settled and adjudicated, and if the title be adjudged to be valid, that the extent and boundaries thereof be then settled and adjudicated, excepting any part of such land that shall be found to have been disposed of by the United States.

If the title to said lands be found to be invalid and void, to so order, adjudge, and decree.

And for such other order or orders, judgments, or decrees as to the court may seem meet and proper in the premises.

MATT. G. REYNOLDS,

U. S. Attorney.

W. H. BARNES, *Counsel.*

(Endorsed :) Filed in the office of the clerk, court of private land claims, October 19, 1892. Jas. H. Reeder, clerk, by Irenio L. Chaves, deputy.

7 And be it further remembered that thereafter, to wit, on the 20th day of November, A. D. 1892, answer was filed in the office of the clerk of said court; which answer is in the words and figures following:

8 UNITED STATES OF AMERICA, }
District of New Mexico, } ss.:

In the United States Court of Private Land Claims.

UNITED STATES OF AMERICA, Plaintiff,

vs.

SANTIAGO AINSA, Administrator of the Estate of Frank Ely,
 Deceased; Rollin R. Richardson, Don A. Sanford, Wm. S.
 Fleming, C. C. Watkins, Defendants.

Comes now Santiago Ainsa, as administrator, with the will annexed, of Frank Ely, deceased, by his attorney, and for his separate answer to the petition of the United States of America herein admits that as such administrator he is holding and asserting a claim in fee by a complete and perfect title to the land in Pima county, Territory of Arizona, known as the San Jose de Sonoyita private land claim or grant, as set out in said petition, and admits that he has not voluntarily come into this court for a consideration of such title.

Defendant denies that neither he nor his intestate nor any grantor from whom they derived title have never been in the possession of nor have occupied the land so claimed by them, and that they do not now.

9 Defendant denies that the land claimed by them as aforesaid are not now or that they have not been designated by occupation or segregated from other lands by marks on the ground, by fence, monuments, or other means of designation, and denies that the boundaries of the land claimed are open to question, and that the location, extent, and boundaries of the lands claimed are uncertain and indefinite.

Defendant denies that the title to the lands so claimed by him as administrator, by virtue of the grant under which they were sold and conveyed, is open to question, and denies that the said grant is invalid and void because the same was not made according to the law then in force, or that it is invalid and void for any other reason or at all.

Defendant denies that at the date the United States acquired sovereignty over the territory which embraces said land said land so claimed were not located, and denies that the title papers upon which the said claim was then based were not recorded in the archives of Mexico.

Defendant avers that whether patents were issued to any or all of the persons named in the petition herein, as set out therein, he has no information on which to form a belief and he therefore denies the same, but defendant avers that any and all of said patents, if any were issued, were and are wholly invalid and void as to this defendant.

10 Defendant avers that the title papers to the said private land claim or grant are now in the possession of the United States surveyor general for the Territory of Arizona; that defendant has requested the delivery to him of such title papers,

but that the said United States surveyor general has refused so to do, and that for this reason this defendant is unable to file with this answer the said title papers.

ROCHESTER FORD,

Attorney for Defendant, Santiago Ainsa, Administrator, &c.

(Endorsed:) Filed in the office of the clerk, court of private land claims, November 20, 1892. Jas. H. Reeder, clerk, by Irenio L. Chaves, deputy.

11 And be it further remembered that thereafter, on the 11th day of December, A. D. 1893, at the December term, 1893, of said court, held at Tucson, Arizona Territory, an order was made by said court; which order is in the words and figures following, to wit:

12 In the Court of Private Land Claims, Arizona District.

UNITED STATES

vs.

SANTIAGO AINSA, Adm'r, &c., *et als.*

{ No. 40. San Jose de Sonoita
Grant.

On motion of Matt. G. Reynolds, Esq., attorney for the United States, made in open court on this the 11th day of December, 1893—

It is ordered that the defendants in the above cause file with the clerk of this court, at Tucson, Arizona, on or before January 15th, 1894, for the inspection of the attorney of the United States, all grant papers, evidence of title, and documents of whatever kind and nature which said defendants expect to offer in evidence in the above-entitled cause, with copies and translations of the same; also that said *plaintiffs* file with the clerk of this court, on or before said date, to wit, January 15, 1894, for the purpose aforesaid, all original papers in their possession or under their control purporting to evidence a grant by the Mexican nation, the State of Sonora, or the Republic of Mexico to the property described in the bill of complaint herein or any part thereof, with translations or copies of the same; also that said defendants file with the clerk of this court,

13 on or before said date, to wit, January 15, 1894, for the purpose aforesaid, a duly authenticated transcript of all records and documents the original- of which are not under the control of said defendants, purporting to evidence a grant by the Mexican nation, the State of Sonora, or the Mexican Republic to the land described in defendants' answer herein or any part thereof, which you expect to introduce in evidence; also that said defendants file with the clerk of this court, on or before January 15, 1894, for the purpose aforesaid, all original deeds, with copies and translations thereof, and mesne conveyances, with copies and translations thereof, by which they and each of them claim title through and under the original grantee to the grant described in the answer *petition* of said defendants.

It is further ordered that the clerk of this court transmit by mail a duly certified copy of this order to Rochester Ford, Esq., attorney for defendant- Ainsa *et als.* in this cause.

14 And be it further remembered that thereafter, to wit, on the 20th day of March, 1894, an amended answer was filed; which answer is in words and figures following, to wit :

In the Court of Private Land Claims, Arizona District.

UNITED STATES OF AMERICA

vs.

SANTIAGO AINSA, Administrator of the Estate of Frank Ely, Deceased, *et al.*, Defendants.

No. 40. San Jose de Sonoita Grant.

Amended Answer.

Comes now Santiago Ainsa, administrator, with the will annexed, of Frank Ely, deceased, and, by leave of court first had and obtained, files this his amended answer, and, in addition to the allegations already set forth in his answer on file herein, alleges as follows:

That as such administrator he is the owner in fee, holder, and possessor of that certain tract of land commonly known as the San Jose de Sonoita grant or private land claim, lying, being, and situate in the southern part of the county of Pima, Territory of Arizona, and more particularly hereinafter described.

That defendant owns in fee, holds, and possess- such lands under and by virtue of a certain instrument in writing now and hereafter designated as and being a grant title, bearing date May 15, 1825, made and executed by Juan Miguel Riesgo, commissary general of the treasury, public credit, and war of the State of the Occident, in the name of the sovereign nation of the Mexican Republic, under and by virtue of article 81 of the royal ordinances of intendentes of December 4, 1786, and pursuant to the provisions of the royal institute of October 15, 1754, which is quoted in the same article, and under and by virtue of the other laws governing said action.

That under and by virtue of such laws such proceedings were thereunder lawfully and regularly had as that the said commissary general of the treasury, public credit, and war of the State of the Occident, in the name of the sovereign nation of the Mexican Republic, duly and regularly and for a good and valuable
15 consideration, to wit, the sum of one hundred and sixteen dollars two reales and five grains, and for other good and valuable considerations in said grant title set forth and described, did, on said May 15, 1825, sell and convey in fee to one Don Leon Herreros the land hereinbefore mentioned and more particularly hereinafter described, commonly known as and called the San Jose de Sonoita grant or private land claim.

That the said grant or private land claim was instituted by a petition of said Don Leon Herreros to Brigadier General Cordero,

governor and intendente of the provinces of Sonora and Sinaloa, praying for two sitios of land, more or less, in a place known as Sonoita, in the jurisdiction of the presidio of Tubac, and that proceedings of survey, valuation, and publication were taken on this petition as required by law and as set out in the said title papers, and on May 15, 1825, the tract as surveyed according to the said title papers, and the whole of said tract according to the natural landmarks and boundaries set out in said proceedings of survey, was sold to said Don Leon Herreros for the sum of one hundred and sixteen dollars two reales and five grains, which amount was thereupon paid by said grantee; and that thereupon, on said May 15, 1825, there was issued to the grantee the testimonio or titulo of said grant, and the said grant was thereupon, on said last-named date, duly recorded in the archives of Mexico, to wit, on page 2 of the proper book in the office of the said commissary general.

Defendant alleges that said original grant title or instrument of writing by which said grant was conveyed to the aforesaid grantee is not in the possession or under the control of this defendant, but is, together with other records and papers relating to said grant, in the possession and custody of the United States surveyor general of the Territory of Arizona, at the city of Tucson; that for this reason

16 the said original titulo or grant title constituting and creating said grant cannot be herewith presented or delivered, but defendant files herewith as exhibits to or parts of this answer three certified copies in Spanish of said original titulo and three copies of the translation of same, and defendant avers that said copies are correct and literal copies of said titulo, and that said translations are correct translations of same.

Defendant avers that the map filed herewith, executed by George J. Roskrue, Esq., which map is made an exhibit to or part of this answer, is a correct map of said San Jose de Sonoita grant or private land claim, and correctly represents the boundaries of said grant and the lands embraced therein, and defendant avers that he owns in fee by virtue of said grant title all of said lands so designated by said map, and that the said grant comprises 12,147.69 acres, as shown by said map.

That under the provisions of the eighth section of the act of Congress approved July 22, 1854, entitled "An act to establish the offices of surveyor general of New Mexico, Kansas, and Nebraska, and to grant donations to actual settlers therein," and for other purposes, and under acts amendatory or in extension thereof or supplemental thereto, one Matias Alsua, who was then the grantee of and successor in interest to Leon Horreros, the original grantee of said grant, and who is the grantor of defendant, filed on December 30, 1879, in the office of the United States surveyor general of the Territory of Arizona, his petition praying for the confirmation to him of said San Jose de Sonoita grant, accompanying which petition were the original title papers of said grant; that thereupon the said United States surveyor general caused said grant to be investigated by one R. C. Hopkins, a duly authorized and competent agent of the United States, and the said United States surveyor general, in

his official report, under date of January 14, 1880, to Congress on said grant stated that said special agent Hopkins reported that the expediente of said grant had been found in its proper place
17 in the archives of Mexico; that said expediente was written on the corresponding stamped paper; that the proceedings of survey, valuation, publication, and sale were all regular; that the signatures to the title papers were genuine, and that there was nothing to cast suspicion on the *bona fide* character of the original title papers, and said United States surveyor general reported the said grant as a valid one and recommended its confirmation to the extent of one and three-quarter square leagues, as measured by the original grantee, and no more.

Defendant avers that the statements in said report as to the genuineness of said grant and its record in the archives of Mexico are true, and that the said grant is in all respects a genuine and valid and lawful one, and that the said grant is and at the time of the execution of the treaty known as the "Gadsden treaty" was duly recorded in the archives of Mexico.

Defendant avers that he owns, holds, and possesses said grant under and by virtue of divers and sundry mesne conveyances made by the original grantee of said grant and his grantees to defendant, which conveyances are in part on file in the office of the United States surveyor general of the Territory of Arizona and of record in the office of the county recorder of the county of Pima, Territory of Arizona, and in part on file and now deposited in the office of the clerk of the district court of the first judicial district of the Territory of Arizona in and for the county of Pima; all of which conveyances this defendant will produce at the trial of this cause if he is able to secure same, and if not he will produce and file in this court certified copies of same, and defendant herewith files as an exhibit to or part of this answer an abstract of all such conveyances under which he deraigns title to said grant.

Defendant further alleges that the original grantee of said grant was a Mexican and a citizen of the Republic of Mexico, and
18 that at the time of the Gadsden treaty the owners of said grant were likewise Mexicans and citizens of the Republic of Mexico.

Defendant avers that each and every person stated in the petition filed herein by the United States to be in possession of any part of said grant is in possession unlawfully and without the permission of this defendant, and that any and all patents or other indicia or muniments of title issued by the United States to any lands within the limits of said grant were issued in contravention of law and are wholly null and void, so far as the rights of this defendant are concerned, for the reason that said grant is and at the time of the Gadsden purchase was a complete and perfect title in fee in the owners thereof; that the United States never had any title to any part of said grant, and that none of the said patents or muniments of title conveyed any title.

Defendant further avers that all of the steps and proceedings in the matter of the grant and sale of said lands were regular, com-

plete, and lawful and vested a perfect and valid title in fee thereto in the grantee of said grant, and that said grantee at the time went into the actual possession, use, and occupation of said grant and erected the proper monuments thereon, and that said grantee and his descendants and legal representatives have continued ever since and until the present time in the actual possession, use, and occupation of the same and are now seized and possessed in fee thereof; that said grant documents constitute a complete and definitive grant in fee by way of sale, coupled with the condition subsequent not to abandon the same for a longer period than three years without good reason, which would subject the tract to adjudication to third parties who might apply for or denounce the same; that no forfeiture of said grant was ever claimed, and that this defendant is entitled to a confirmation of said grant in accordance with the metes and bounds set forth in the original survey and grant of 19 & 20 the same; that said grant was not a grant by quantity, but was a sale by the metes and bounds and natural landmarks established by the said survey thereof made by the Spanish officials prior to the issuance of same, and that it vested in the grantee a perfect and valid title in fee to the whole of said tract so surveyed.

Wherefore defendant prays that the validity of his said title may be inquired into and decided, and that his title to said lands be declared valid, and that the said grant be adjudged to be and always to have been a complete and perfect and unconditional title in fee, and that defendant be adjudged to be the owner in fee thereof, and for such other and further relief as to the court may seem meet and proper in the premises.

ROCHESTER FORD,

Attorney for Defendant Ainsa, Administrator, etc.

(Endorsed :) Filed in the office of the clerk, court of private land claims, March 20, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

21 And be it remembered that thereafter, to wit, on the 20th day of March, 1894, a reply was filed in the following words and figures, to wit:

| | |
|---|-----------------------------------|
| UNITED STATES, Plaintiff, | } No. 40. San Jose de Sonoita. |
| vs. | |
| SANTIAGO AINSA, Administrator, etc., et al., Defendants. | |

Reply.

Comes now the United States and for reply to the answer filed by the defendants herein says that as to the matters and things therein stated, which are not admissions of the allegations in the petition, the same are denied, and it is prayed that defendants be put to their proof as to the truth of the same.

And failing therein, that their prayer for affirmative relief by way of confirmation of said claim be denied and the claim be dismissed.

MATT. G. REYNOLDS,

U. S. Attorney.

W. H. BARNES, *Counsel.*

(Endorsed :) Filed in the office of the clerk, court of private land claims, March 20, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

22 And be it further remembered that thereafter, to wit, on the 20th day of March, A. D. 1894, the same being the 6th day of the regular December term, 1893, of this court, held at Tucson, in the Territory of Arizona, the following proceedings were had, viz :

| | | |
|---|---|---------------------------------------|
| UNITED STATES | } | No. 40. San Jose de Sonoita Claim. |
| <i>vs.</i> | | |
| SANTIAGO AINSA, Adm'r, etc., <i>et als.</i> | | |

This cause came on for trial, Matt. G. Reynolds, U. S. attorney, and William Barnes, of counsel, appearing for the plaintiff, and Rochester Ford, Esqr., appearing for the defendant, Santiago Ainsa, adm'r, etc., *et als.*

On motion of the U. S. attorney, the court ordered the U. S. surveyor general for Arizona to deliver to the clerk of the court, taking his receipt therefor, all the papers on file in his office relating or pertaining to the claim against the United States on file therein, commonly known and designated as the San Jose de Sonoita grant.

After a statement of the case by the attorneys for the respective parties, the defendants called as witnesses R. C. Hopkins, Santiago Ainsa, G. J. Roskrige, and — McGee, who were sworn and examined.

The plaintiff called H. O. Flipper and R. R. Richardson, who were sworn and examined. The consideration of this case was then suspended, the court adjourning until the following day. When, on said following day, to wit, the 21st day of March, 1894, the trial of this cause was resumed, the plaintiff called Thomas Hughes, Chas. Shibbell, Peter Brady, and G. J. Roskrige, who were sworn and examined, after which the evidence closed and counsel began their argument.

The court adjourned until the following day, to wit, the 22nd day of March, 1894, when the consideration of the case was resumed; and, the arguments having been concluded, the matter was submitted to the court for decision, and was by the court taken under advisement.

23 During the trial of this cause the following testimony, both oral and documentary, was offered and introduced :

| | | |
|---|---|---|
| UNITED STATES vs. SANTIAGO AINSA, Adm'r, etc. | } | No. 40. "San José de Sonoita P. L. C." |
|---|---|---|

Transcript of official shorthand report of proceedings had upon the trial of the above-entitled cause, at the court-room of said court, in the city of Tucson, Arizona, on Tuesday, March 20, 1894, at 1.30 o'clock p. m., before the court (all members present), in the presence of Hon. Matt. G. Reynolds, U. S. attorney, C. P. L. C., and W. H. Barnes, Esq., assisting, for the Government, and Rochester Ford, Esq., for defendant Ainsa, adm'r, etc.

Mr. Ford read the answer of Ainsa, adm'r.

By Mr. REYNOLDS: So far as the Government is concerned, I will file a reply to the answer in the nature of a cross-bill, simply traversing the material allegations of the answer of Ainsa just read after the defence has closed.

R. C. HOPKINS, a witness called and sworn on behalf of the defendant, testified as follows:

Direct examination.

By Mr. FORD:

Q. Please state your name and age.

A. R. C. Hopkins; age, in my 78th year.

Q. Please state what experience, if any, you have had in the investigation of grants of land made in what is now the State of California and the Territory of Arizona and the State of Sonora, Mexico, where you made such examinations, during what period of time, for what purpose, and for whom.

A. From 1855 till 1886 I was in the service of the U. S. Government in connection with Spanish land grants in California and Arizona.

Q. What examination, if any, did you make of title papers of land grants of lands situate in the present Territory of Arizona, and at what place did you make such examinations?

A. In 1879 I was sent to Mexico as a special agent for the Department of the Interior to examine the records in the State of Sonora, at Hermosillo and Urez—Urez was the seat of government at that time—and in other places where records might be found. I made such examination and reported to the government the result thereof.

Q. To what extent, if any, did you examine the signatures of government officials to records in the office of the surveyor general of Arizona or in the cities of the State of Sonora?

A. I examined in the archives of Sonora the signatures of officials to grants that I supposed were in the Territory of Arizona, the portion ceded to the United States.

Q. How extensive or thorough was that examination?

A. I spent some 2 or 3 or 3 or 4 months in the archives, I think,

as I remember, and I made it the subject of search with considerable care.

Q. Do you know whether during the early part of 1880 you were employed by the Government in the office of the United States surveyor general for this Territory?

A. I was.

Q. (Exhibiting document.) I hand you a paper purporting to be the title paper of the "San José de Sonoita" grant and ask you if you have ever seen it.

A. Yes, sir; I have seen that.

26 Q. Please examine the signature at the end of that title paper.

A. It is signed by Juan Miguel Riesgo, José Maria Mendoza, and Antonio Apolategui.

Q. Have you ever seen other signatures purporting to be those of Riesgo and Mendoza?

A. I have.

Q. Where?

A. In the archives.

Q. How many, in a general way?

A. I couldn't give the number, but quite a number of them, I think.

Q. Many or few?

A. I have seen quite a number; a great many of Mendoza's.

Q. Please examine those signatures and state whether in your opinion the ones of Riesgo and Mendoza are genuine.

A. I have examined them. I think they are.

Q. Where did you see that instrument, if you remember?

A. Filed in the surveyor general's office of Arizona.

By Mr. FORD: We offer it in evidence as an ancient document, on the proof already made. It is executed in 1825.

Objected to because it is not an "ancient document," or was not in 1853.

By the COURT: It may go in.

Q. What knowledge, if any, have you of the Spanish language?

A. I understand the Spanish language; have been using it, translating it, for years, many years.

Q. (Exhibiting same document). I call your attention to the words here, "una sierra alta colorado;" what is the proper translation of that?

A. High red mountains, or range of mountains.

Q. The word "red" was omitted from the translation you made.

A. Yes, sir; a sierra is a range of mountains.

27 Q. Now, what is the translation of this phrase (referring to document)?

A. "Running the measurement down the cajon."

Q. Give the Spanish and then give the court a literal translation of it, please.

A. "Se continuase la medida por todo el cajon abajo hasta completarle sobre poco mas ó menos los dos sitios."

Q. Yes; now translate those words.

A. "Continuing the measurement all along down the cajon of the cañada, or box of the cañada, till completing a little more than two leagues." Cajon is a box or narrow canyon—cañada.

By Mr. FORD: We offer in evidence the translation filed in this case, with those two slight alterations.

By Mr. REYNOLDS: You are entitled to do so. If we object to it we will file our own translation.

Q. Did you ever see at the city of Hermosillo or elsewhere a paper relating to this grant?

A. I saw in Hermosillo the matrix, or matriz, of this grant in 1879.

Q. What examination, if any, did you make of it?

A. I examined it sufficiently to see its character.

Q. What have you to say of the character of the paper on which it was written and the signatures attached to it?

A. My recollection is it was written on properly stamped paper and the signatures were genuine; that is my recollection.

By Mr. FORD: We now offer in evidence a certified copy of that expediente from the archives of Mexico; we also offer translation of same.

We also offer in evidence the original deed from Herreros, the grantee, to Juan Elias, following a copy of the testimonion. It is dated December 26, 1831.

We also offer a second deed from Herreros to Elias, of the same date; also deed from Elias to Crespo, deed from Crespo to Alsua, deed from Alsua's administrator to Ely, and deed from Mrs. Alsua to Ely.

Also offer in evidence certified copy of appointment of Santiago Ainsa as administrator of Frank Ely, dec'd. Under the peculiar laws of this Territory, both the real property and personal estate goes to the administrator. He takes possession of both.

Cross-examination.

By Mr. REYNOLDS:

Q. You say you have examined the archives with reference to this grant at Hermosillo?

A. This and others; yes, sir.

Q. Have you any definite and specific recollection as to this particular grant?

A. I think I have. I made a report upon it. I have read that report that I made in the surveyor general's office.

Q. Do you know whether there is any record of this grant at Hermosillo?

A. Sir?

Q. I am speaking of the patent, not the expediente?

A. Of the grant itself?

Q. Yes, sir.

A. You mean in the "Toma de Razon"?

Q. No, sir.

A. I don't remember; I do not recollect.

Q. Do you know whether there is any "toma de razon" of it or not?

A. The matrix of it is there.

Q. The original of this copy shown you?

A. That is my recollection.

Q. Do you know whether the toma de razon is there or not?

A. Of this case?

Q. Yes, sir.

29 A. That I do not recollect distinctly. The book of toma de razon does not go back as far as 1825, and I do not now remember.

Q. Well, I ask you the question whether or not you remember seeing a toma de razon of this grant?

A. That I do not remember, sir.

Q. Do you remember of seeing a receipt for the purchase-money of this grant anywhere in Hermosillo?

A. That I cannot recollect specially now.

Q. Did you ever see the titulo at Hermosillo?

A. I have; the original of that paper. I mean the matrix.

Q. The matrix of it?

A. That is my recollection.

Q. Have you ever compared this titulo with the matrix?

A. I don't know as I have.

Q. It should be a copy of it, should it not?

A. It should be.

Q. Is it?

A. I couldn't say.

Q. Did you ever examine to determine that question?

A. No; I haven't compared this copy with the matrix.

Q. What do you call the matrix at Hermosillo?

A. The original papers, the proceedings.

Q. In other words, it is the title proceedings from the beginning to the end?

A. Yes, sir; in the original. It is on file.

Q. Are they complete?

A. In this case?

Q. Yes, sir.

A. That I cannot remember specially now. It is 14 years or 15 years since I saw them.

Q. You say you have some recollection about it?

A. I made a report and I set out the facts in my report to the government. That is on file in the surveyor general's office, and I looked at it yesterday.

Q. Overhauled the report that you made?

A. I looked at it very carefully.

30 Q. For the purpose of refreshing your memory?

A. Yes, sir; but I remember very distinctly this case.

Q. Now, then, having refreshed your memory, can you state whether or not there is a toma de razon of it there?

A. I think not. I think in my report I so state.

Q. Is there a grant there?

A. There is no "borrador" of the grant. I recollect that is also stated in my report.

Q. The expediente or proceedings stops in Hermosillo in 1821?

A. Yes, sir.

Q. Subsequent to that time is there any other record of it there?

A. There is an entry made, I think, in some books in 1825.

Q. Where is that entry made?

A. That I cannot now remember without looking at my report.

Q. Made in a book?

A. I cannot remember.

Q. Well, is there any copy of what was done in 1825 there?

A. You mean in this case?

Q. Yes, sir; this particular case I am speaking of.

A. That I do not know; I don't recollect.

Q. The only document you saw, then, in the archives is what is called an expediente?

A. The matrix—the original papers; they were filed and made up in the case.

Q. The matrix is, as I understand, the original petition?

A. Yes, sir; with the proceedings thereon—sales and everything.

Q. Each step down to the issuance of the grant?

A. Yes, sir; showing all the proceedings.

Q. That is called an expediente?

A. Yes, sir; I call it the matrix. There is no copy of the grant attached to that, that I remember.

Q. Now, you have translated this title yourself at one time?

31 A. I don't remember; perhaps I did. I have no recollection of it—that is, no special recollection. I think Mr. Ainsa made a translation of it; I am not certain. He was the attorney.

Q. Do you think the translation you made for the surveyor general was correct?

A. I don't know that I made that translation. My recollection is Mr. Ainsa furnished a translation for himself. I do not recollect now of making a translation. I may have examined it, but I don't know that I made it.

Q. Ought not a copy of the borrador be attached to the expediente in the archives?

A. They generally are; yes, sir.

Q. And the original attached to the testimonio given to the parties?

A. But they are not always, either in Hermosillo or in California. The expedientes in San Francisco are made up in the same way. The borrador is generally attached to the proceedings.

Q. And the testimonio ought to be a copy of the expediente?

A. Yes, sir.

Q. Or matrix?

A. Yes, sir; copy of the proceedings with the original (interrupted)——

Q. I understand "expediente" to mean proceedings.

A. Yes, sir; proceedings.

Q. There ought to be attached to these proceedings a copy of the borrador, and attached to the copy of the matrix the original patent or grant?

A. To make them perfect; yes, sir.

Q. And delivered to the party?

A. Yes, sir.

32 Redirect examination :

Q. What was this borrador? Please explain a little more fully for the enlightenment of counsel.

A. This borrador is an unsigned copy of the grant. It is a copy of the title made by a clerk and attached to the proceedings that remains on file. It is called a borrador.

Q. Do you mean that it is attached or slipped in among the leaves?

A. They were generally stitched together and formed a copy book, but they were not always so. A borrador is not always found either in the archives at Hermosillo or in California.

Q. Please state how the report that was made to the Government was made, as a physical fact. What had you before you, if anything, in making that report, and when was the report made with reference to your examination?

A. It was made in August, 1879. The examination was made in the months of April, May, June, and July, in Hermosillo, and this report was made in August from the copies and the data that I obtained in Hermosillo, with the papers before me. I had free access to the archives every day.

Q. You mean the memoranda were made by you at the time, in Hermosillo, with the papers before you?

A. Yes, sir; with the papers before me.

Q. As to the titulo, the paper issued to the grantee, and the matrix or expediente, do you wish to be understood as saying that the titulo is in all cases an exact copy of the matrix?

A. The titulo is the document—the title, signed by the governor or by the intendente; the grant itself, not containing the proceedings. If a copy is made of that attached to the matrix, of course it should be an exact copy, but it is not signed; it is not an original. The signatures and all are copy. Even in California, in our archives, the signatures are not copied there, even. It is a rough copy made by a clerk, attached to the proceedings, making altogether the expediente.

33 Q. Do you remember whether it is or is not true that in the expediente or matrix very often the offers of sale for thirty days are set out day by day, whereas the titulo—the title delivered to the grantee—states that the property was sold for thirty days, without setting out the proceedings in full?

A. Yes, sir.

Q. What is true as to that fact?

A. That is the case often, I think, but sometimes it is the case, I know.

Recross-examination:

Q. Are the proceedings regular where it comes that way?

A. Well, they were accepted. They would not be full and complete, you know.

Q. Well, are they regular? To be regular, should not the title up to the grant be a copy of the expediente?

A. Well, I suppose it should be; yes. You mean the titulo?

Q. You may call it what you please, but it is the instrument given to the party as evidence of title.

A. Which contained a copy of all of the proceedings, with the original title attached to it?

Q. Yes, sir; that is it.

A. They should have a correct copy of the proceedings, with the title signed by the governor or intendente.

34 SANTIAGO AINSA, a witness called and sworn in his own behalf as defendant, testified as follows:

Direct examination.

By Mr. FORD:

Q. What is your name and occupation?

A. Santiago Ainsa; attorney-at-law.

Q. What is your nationality?

A. Mexican.

Q. What knowledge have you, if any, of the Spanish language?

A. I was born a Spaniard; I suppose I know it.

Q. What examination, if any, have you made of titles to lands in the present Territory of Arizona issued by the preceding government?

A. I made a very thorough examination for my own business purposes, as an attorney, a lawyer.

Q. At what place was that examination made and during what length of time?

A. About fifteen years I have been dabbling in these grants.

Q. At what places were those examinations made and of what did they consist?

A. Well, I examined them in Sonora, in the capital, in the archives of Mexico, very often—15 or 20 times, perhaps.

Q. I hand you a paper purporting to be the titulo of the San José de Sonoita grant, and ask you to state whether you have ever seen that.

A. Yes, sir; I have seen this.

Q. When?

A. Well, as far back as 1879 or 1880, when it was placed in my hands by the owner, Mr. Alsua.

Q. What did you do with it then?

A. I examined it thoroughly and translated it and prepared the case for the surveyor general's office and presented it there.

Q. What did you do with the paper?

A. I presented it to the surveyor general of Arizona.

35 Q. What examination, if any, have you made of the signature appended to that instrument, purporting to be the signature of Riesgo, and also that of Mendoza?

A. I examined, with other papers in the archives of Sonora, and find they are genuine so far as appearances are concerned.

Q. To what extent did you examine signatures of those officials?

A. Well, I examined a great many for the purpose of ascertaining the validity of grants in this Territory.

Q. And to what papers were such signatures affixed?

A. Grants made by the State of Sonora and other authorities there, purporting to be officers of the government with the right to make these grants.

Q. Where were those papers that you examined?

A. They were in the archives of the treasurer general of the State of Sonora.

Q. Please examine the signatures attached to that paper, Riesgo and Mendoza, and say what is the truth, in your opinion, as to their genuineness.

A. I believe they are genuine, written by the persons pretending to sign them, whose names they bear.

Q. Did you ever see, in the city of Hermosillo or elsewhere, a paper relating to that title?

A. Yes, sir; I saw the matrix of this.

Q. What examination did you make of the matrix or expediente and the signatures attached to it?

A. I examined this paper, to my knowledge, twice and compared it with the original expediente.

Q. What have you to say, after the examination of that matrix in Hermosillo, as to its genuineness?

A. The matrix?

Q. Yes, sir.

36 A. The matrix is true and correct, as I believe. I believe this is as genuine as any other of the papers in the archives of Sonora. If there is any true there, this is true.

Q. Well, by that do you mean to cast a cloud over the genuineness of all of them?

A. No, sir.

Q. Or are you prepared to say whether the San José de Sonoita expediente is genuine?

A. I pretend to say that the nation or State issuing titles is not going to call itself a perpetrator of frauds on its own titles, and if this one is not true, then none of the titles there are true.

Q. Will you answer the question directly whether, in your opinion, the matrix at Hermosillo is genuine?

A. Yes, sir; I am sure it is genuine, so far as human nature can be certain of anything.

Cross-examination.

By Mr. REYNOLDS :

Q. You believe it to be genuine because you found it where it should be?

A. That is one of the reasons, not the only one.

Q. Then you further believe it to be genuine because you believe the signatures to be genuine?

A. Because I see the writing is genuine and the signatures are genuine.

Q. Did the same man who signed it write it, too?

A. No, sir.

Q. Do you know who wrote it?

A. No, sir; I do not; but it was that kind of writing right through that I saw in a great many documents. You will find that same handwriting in ten or twenty documents, and they must be written by a clerk in that office.

37 Redirect examination :

Q. To what extent, if any, does the titulo which you hold in your hand differ from the matrix or expediente—in what respects?

A. In some parts they are not, for a certainty. The location and the measurements are not in this. For instance, the part of the sales is omitted, as it is omitted in a great many others.

Q. Is the "pro tanto" or granting clause, which is at the end of that instrument, in the matrix or expediente?

A. It never is. It is only given with the title, given to the grantee, attached to that, and there is no copy left. Sometimes you will find sort of a memorandum made out for the purpose of the clerk drawing out what he should do by somebody, and from that copy is made the granting clause which is attached to the instrument that is delivered to the grantee.

Q. What is that copy or draft called, if you remember?

A. It is called a borrador, but it is not in every grant, and it is not official; it has no existence in law (interrupted)—

Objected to as improper.

By Mr. REYNOLDS :

Q. You say the granting clause is never attached to the expediente in the archives?

A. Never.

Q. And if you found one there it would be suspicious?

A. If I should find one there I would think it very singular.

By Mr. FORD :

Q. Mr. Ainsa, did you find at Hermosillo any book of tomas de razon in which there was an entry of this grant?

A. No, sir.

Q. What search, if any, did you make for one?

A. I searched all I could for several times, and I offered the man there, the keeper of the archives, to hunt me up any toma de
38 razon prior to the one existing in 1831, but they never could find any toma de razon.

Q. How many books of toma de razon are there, if you know, in that office?

A. There is one.

Q. Where does that book begin?

A. On the 24th of October, 1831.

Q. And you say you were able to find no book with entry of grants prior to that date?

A. No, sir.

By Mr. FORD: In accordance with the stipulation which we will prepare and file, I now offer in evidence the report made by Mr. F. W. Oury, now deceased, on the survey of the San Jose de Sonoita grant.

By Mr. REYNOLDS: And with that may go in the examination with reference to the survey, and the map and location of the grant as founded on that survey, taken in the case in the district court of this Territory for the first judicial district.

By Mr. FORD: Very well; we will prepare such a stipulation.

(The said report and map will be found attached to this transcript as an exhibit.)

GEORGE J. ROSKRUGE, a witness called and sworn on behalf of the aforesaid defendants, testified as follows:

Direct examination.

By Mr. FORD:

Q. State your name, age, and residence.

A. George J. Roskruge; 48 years old; residence, Tucson.

Q. What is your occupation?

A. Surveyor.

39 Q. How long have you been a surveyor?

A. About 22 years.

Q. How long have you lived in Pima county, Arizona?

A. 20 years.

Q. And during that time what has your occupation been?

A. Surveyor.

Q. And to what extent have you followed your profession in this county?

A. Pretty nearly all the time I have been here, excepting for six years I was in the surveyor general's office as chief draughtsman, from 1874 to 1880.

Q. What parts of the county have you surveyed?

A. I have been all over it.

Q. Did you ever make a survey of what is called the San José de Sonoita private land claim?

A. Yes, sir.

Q. Please state how you made that survey and the results.

A. I first got a copy of the expediente, and having that copy I went to "the abandoned place of Sonoita," where I found all old ruins scattered around. It was a well-known point to me; I had known it for probably 15 or 16 years. It had been pointed out to me as the old hacienda—the old Sonoita. From there I went towards the east, to the summit of a somewhat high hill in towards the Red mountain, where I found a monument of stones. Returning to the centre, I went towards the west, taking the trail from the hacienda towards Tubac, and at a place called the "Cazadero" I found another old monument of stones. I then went up the valley above the spring, or where the water comes out that forms the Sonoita river, to a point where some low hills coming down and where the valley turns towards the east. At this point I didn't find any pile of stones. I made very thorough search, but
40 did not find any. I then went towards the east, towards a little chain of hills where there are some oak trees, and there I found another old monument of stones. I then went towards the west, on the top of a white hill where I found another old monument. From there I went down the Sonoita, probably 7 or 8 miles, to what is called the "equattes"—two twin buttes.

Q. Will you describe those buttes?

A. Yes, sir; those two buttes stand out on a broken mesa—well, they stand up just like two bee-hives. When a person sees them once he never forgets them. They had been pointed out to me in 1877 or 1878 as being the landmarks of the Sonoita grant. I then went towards the west, to a ledge of rocks where a lot of stones had fallen down, and there I found an old monument. I then went further west, to the top of a hill which, coming down towards the Sonoita, forms a little valley, and on the summit of that I found another old monument. All the time I was there I had this expediente with me, and at every corner I would read it and make myself familiar with the wording.

Q. What is that paper you are now examining?

A. It is the map I made from that survey of mine.

Q. What is true as to the courses and distances located on that map?

A. They are correct, as I made it from my survey—from my notes.

Q. I wish you would describe more fully the equattes or twin buttes with reference to each other and with reference to the country near them.

A. I have photographs of them which would describe them
41 much better than I could do it by talking. These (producing photographs) are the equattes. This is a photograph of them as seen from the west centre monument, the reef or rocks with the large stone rolling down.

Q. If you have photographs of any other monuments, will you produce them and identify them?

A. Yes, sir; I have photographs of all the monuments of the grant.

Q. Are they described and identified on these photographs?

A. No, sir; only just for my own guidance, that is all. They are some I made in testing my instrument and I picked them up this morning. I did not make them for this case at all. I just happened to have them and brought them along.

Q. Will you please identify them?

A. Whe- I made the survey I took photographs of all the monuments, and at that time I handed over—I think it was to Mr. Cameron—the photographs, and on those photographs I put down what monuments they represented.

Q. Can you identify them now and offer them in evidence?

A. I believe I can. To the best of my knowledge and belief, that one is a photograph of the centre monument right over the walls of the old hacienda.

(Said photograph was marked as Exhibit "A.")

Here is the monument that we found at the "cazadero."

(Said photograph was marked Exhibit "B.")

Here is another photograph of the centre monument, looking towards the valley.

(Said photograph was marked Exhibit "C.")

Here is another monument taken from the centre of the gap, looking towards the east at the cazadero.

(Said photograph was marked Exhibit "D.")

42 Here are two views of the cazadero, showing rocks on both sides, with the monument in the centre.

(One of said photographs was marked Exhibit "E.")

Here is one with the east centre monument on the high hill.

(Said photograph was marked Exhibit "F.")

Here is the southeast corner of the grant.

(Said photograph was marked Exhibit "G.")

Here is another, "Monument at White hill."

(Said photograph was marked Exhibit "H.")

That one is the southwest corner ("H").

I believe that is all. I was just trying my instrument one day. I did not make them for this case.

Q. Will you describe the appearance of the locality you call the "old abandoned mission of Sonoita"?

A. Well, sir, it is up on a bench from the river bottom, and scattered around are old ruins, and in a great many places you could go along and see where there had been old walls fallen down and the foundation stones sticking up. Up on the hills back of it in two places were the remains of old stone corrals, all fallen down now, and I think there is some old pottery around there, but I am not sure about the pottery. I have always known it ever since I have

been in the Territory as the Old Sonoita. It has been pointed out to me several times.

Q. When, as near as you recollect, did you have it pointed out to you as that?

A. I went down the river in 1877 with Judge Scott. That was the first time, and I think it was in 1877.

Q. Where is that on this map of yours?

A. Marked "Initial monument," "Abandoned Sonoita."

Q. Going from that initial monument in a northeasterly
43 sirection, what, if anything, did you find?

A. Up the valley, do you mean?

Q. Yes, sir.

A. I found what would answer the calls of the expediente—the low hills coming down and the valley turning towards the east.

Q. Before arriving at the low hills, what, if anything, did you find?

A. Found the spring where the Sonoita comes out.

Q. How far is that from the low hills?

A. Oh, probably a mile, more or less.

Q. Going from this initial point to those low hills, is there or is there not any other valley which turns towards the east before you get to the valley going to Harshaw?

A. No, sir; no other valley turning towards the east that I ever saw, and I have been over the country a great many times.

Q. From this monument beyond the spring at the foot of the low hills what did you do, and what, if anything, did you find?

A. I didn't find anything there but the old house at the foot of the low hills.

Q. Well, state from that point where you went—the distance, and what, if anything, you found.

A. I then went south 60 deg. east 67 chains, and on the summit of a bench coming right up from the valley I found an old monument of stones.

Q. Have you given the distance to that point?

A. Yes, sir; 67 chains.

Q. From there where did you go, how far, and what did you find?

A. I then went north 56 degrees west 57 chains, and on the summit of a high white hill I found an old monument of stones.

Q. What sort of a hill was that—what was it covered with, if you recollect?

44 A. Well, it wasn't covered with anything. There was no grass there, but the stones was all white; the whole country was white—granite formation.

Q. What measurement did you then next make, and what did you find, if anything?

A. Well, in going from the initial point at Sonoita, I went south 79 degrees east 1 mile and 45 chains, to the summit of a high hill, within about, as near as I could tell, 200 feet from the top, and there I found another old monument of stones.

Q. What direction was this from the initial point?

A. South 79 degrees east.

Q. Describe the location where that monument of stones was found.

A. On the slope of the highest hill in towards the red mountain, within about two hundred feet of the top.

Q. Where was that red mountain?

A. Standing at the Sonoita itself and going in this direction, you go right towards the red mountain, and on top of this hill you will find this monument. The hill is all red because it is all alum. It can't be missed.

Q. You found it before reaching the high red mountain?

A. Yes, sir; before reaching the red mountain. The hill goes about 200 feet and then goes right off.

Q. What is true as to its being the only conspicuously red mountain there?

A. It has been known to me as the red mountain for the last 18 or 20 years.

Q. What is true as to others near it being as red; are there or are there not? Are there any other red mountains near this, or does it stand alone as being red?

A. Well, it is a red mountain that stands there by itself. There may be some very low hills that are red, but there is no other
45 red mountain there that I know of. It is the end of the Patagonia mountains.

Q. What measurement did you next make, and what did you find?

A. North 75 degrees west 82 chains towards the cazadero, I found right between where the rocks stick up, right on the trail, a monument of stones.

Q. Describe the immediate topography right around that monument of stones. What do you mean by "the rocks sticking up"?

A. It is the trail from the old hacienda to Tubac, and as you come up over a raise out of one ravine right on the summit there was a very big monument of stones, and the trail passes right by the side of it, and apparently about 150 feet to your left a mass of rocks stand up, and about the same distance on the right there is another mass of rocks, as shown in the photographs here produced.

Q. Will you describe that ravine where the monument of rocks was, as to its height and width?

A. Well, there are rocks coming down, I should say, to the best of my knowledge, probably about from two to three hundred feet wide, coming down to a point, as is shown in this photograph.

Q. What measurement did you next make, what distance, and what, if anything, did you find?

A. I then went down to the "quates" or twin buttes.

Q. What course and what distance?

A. South 57 degrees east 1 mile 20 chains, to a monument which I found near a ravine of rocks.

Q. Did you find any monument at the twin hills, or either of them, if you recollect?

A. No, sir; I don't think there is a single stone on top of the hills.

Q. From there what measurement did you make?

46 A. North 71 degrees west 73 chains, to a monument on top of a high hill, that the base of it comes out towards the river and forms a little valley.

Q. Describe how it forms a valley.

A. Well, the Sonoita breaks out of the canyon about probably half a mile up and widens out, and the foot of this hill comes down and goes over towards the other side of the mesa line, and what I call by that is formed a little valley, or—I hardly know how to describe it; I suppose a little valley would be the description of it.

Q. Did you make any other measurement?

A. No, sir. You understand, these measurements are all taken by triangulation. They are not measured on the ground actually by chain, you understand.

Q. Are the courses and distances correct, according to the best calculation you are able to make?

A. They are correct. I have no reason to make them otherwise. I have no interest in the grant whatever, and had nothing to do but to make correct measurements according to the calls of the expediente.

Q. Do you know the name of that valley where you were making these measurements?

A. That is the Sonoita valley.

Q. What is the range of mountains to the north or west of it?

A. Santa Rita range.

Q. And what to the southeast?

A. To the southeast the red mountain and the Patagonia range.

Q. Is there any running water in this valley, and, if so, where does it begin and how far does it run?

A. The running water commences at the spring and runs all the way down the creek.

47 Q. What spring do you mean?

A. The spring that is about a mile from the point marked for the northeast centre.

Q. Do you know whether above that spring to the northeast there is any running water?

A. No, sir; there is no running water in that valley that I know of till you get up to Monkey springs.

Q. Where is Monkey springs, Mr. Roskruge, with reference to this?

A. It is on the Pennsylvania ranch.

Q. Well, how far from this spring and in what direction?

A. Probably ten miles northeast—about 8 or 10 miles.

Q. So there is no running water between this spring and Monkey spring, 8 or 10 miles to the northeast?

A. No, sir.

Q. How far is the southwestern corner of this Sonoita grant from what are known as the lands of the mission of the pueblo of Tuma-cacori, if you know?

A. I believe there is a conflict between the two grants; that the lines as surveyed now would conflict—the two end lines of the Calabasas and the Sonoita.

Cross-examination.

By Mr. BARNES:

Q. When did you make this survey?

A. I made it in June, 1889, sir.

Q. Did you go out there to survey, and did you survey correctly and accurately the lands as described in the expediente you had with you?

A. That is what I intended to do.

Q. Did you do it?

A. That is what I believe I did.

By Mr. FORD: I neglected to offer the map in evidence. I offer it now.

(Said map was thereupon marked Ex. "I.")

Q. You made a survey by triangulation?

A. Yes, sir.

48 Q. You had no chain and did not attempt to chain off the distances?

A. No, sir.

Q. Before you commenced to triangulate, did you have any initial point?

A. Yes, sir.

Q. Did you find the pile of stones on a high hill before you commenced to triangulate?

A. Yes, sir.

Q. Did you find the spring, the northeast centre monument, before you commenced to triangulate?

A. Yes, sir.

Q. Did you go to all those points before you commenced to triangulate?

A. Yes, sir; I went to all of them.

Q. Found those points first?

A. Yes, sir; and took my bearings.

Q. And then commenced to triangulate?

A. Yes, sir; that's what I did.

Q. The measurements did not direct you to the monuments, but the monuments directed you to what to measure?

A. Well, I will state (interrupted)——

Q. I will withdraw that. Is it not a fact that you found your starting points before you commenced to measure?

A. Yes, sir.

Q. In other words, your measurements did not locate your corners and monuments at all?

Objected to as calling for a conclusion.

A. No, sir; they are not located from the measurements. I went to the places, having the expediente in my hand, and while I was there I made my triangulations from these points; yes, sir.

Q. After you found the places you then made your measurements?

A. Yes, sir. The country is very rough down there, Judge.

Q. Yes.

A. That's just what I did, Judge.

Q. You have the distance from the north centre monument to the initial monument on the map in miles and chains?

A. Yes, sir.

49 Q. You made your calculations by triangulations of the miles and chains?

A. I had to conform to the public surveys because I used that as my base line.

Q. That country, then, had been surveyed?

A. Yes, sir.

Q. And these numbers here on your map indicate the numbers of the sections of the public surveys?

A. Yes, sir.

Q. And you reduced your measurements by triangulation to miles and chains to conform to the surveys of the public lands of the United States?

A. Yes, sir.

Q. Did you measure the line from the initial monument, as you have it on your map to the northeast centre monument, and, if so, how did you do it?

A. I went to the monument and stood up my instrument, and from there I took perhaps ten or fifteen bearings to points that I knew and had located, and I did the same to all the monuments, and then when I came home from these triangulations I compiled this map.

Q. Where did you measure the line off to tie your triangulations on to?

A. On the public surveys.

Q. What line on the public surveys did you take as the base of your triangulation?

A. Oh, I couldn't tell you that.

Q. Did you take any?

A. Yes, sir.

Q. Did you take some one of the Government survey lines shown on this map here?

A. Yes, sir; some of them.

Q. Pick out the line here that you took as the basis of your triangulation.

A. There was one that was down by the northwest corner in the same hill, about 150 feet from the monument.

Q. When did you measure that line?

A. That I measured up from to this corner (referring) so that I could locate it.

50 Q. What is that?

A. The northwest corner monument; it is a township line; northwest corner of section 31.

Q. Now what line did you measure as the basis of your triangulation system of measurements?

A. Then I came over to the "quates," and between the "quates" is another monument, corner of 32, 33, 34, and 35 of the public surveys.

Q. This diagonal line on the map here. It is southwest, is it not?

A. Yes, sir.

Q. How could you get the distance of that line from the Government surveys?

A. I got the distance by the public surveys.

Q. You calculated it?

A. I took the public surveys as a basis of this map.

Q. Did you measure off a line to take your triangulations from before you commenced your triangulation?

A. No.

Q. Did you measure off a line after you got through to correct your triangulation?

A. No, sir; you can't measure to the top of that butte; can't get up there, except on the back side.

Q. How did you measure the line from the northeast centre monument, from the initial monument to the northeast centre?

A. By triangulating it and taking these other points I had there.

Q. We are not all surveyors. Tell us just what you did.

A. I can't tell you any more than I have. I have told you what I done.

Q. Well, you took your staff and compass?

A. Yes, sir; I took the courses from one point to another.

Q. Then what?

A. Then went to other points well known to me; some from the public surveys and some other data that I had, and from that I compiled a map.

Q. Where was your base line of this system of measurement? What is the base line of your triangulation?

51 A. Well, as I told you, the public surveys and other points that I got.

Q. What particular one?

A. I got some points on the railroad, for instance.

Q. Before you commenced the survey?

A. The railroad survey is an accurate survey, you understand.

Q. Show us the map, the base line of your triangulation.

A. I can't show you on the map.

Q. Did you have a base line of triangulation?

A. Yes, sir.

Q. What was it?

A. Some of the public surveys and some other points.

Q. What was it? Show us.

A. I can't show it to you on the map there.

Q. Can a mathematician or surveyor make a map simply from

courses and distances, without a base line to triangulate to and from?

A. I had a base line, Judge Barnes.

Q. Where is it?

A. I can't show it to you; it is not here.

Q. Where was it and how long was it, and how accurately did you measure it?

A. I don't see any difficulty in a man's going out and making a series of triangulations, you understand, especially when he starts in and has public surveys. The northeast corner, for instance—the northeast centre—that is a point I know exactly on the public surveys.

Q. Can you measure the area of land without a base line to start from?

A. You have to have a base line to start from; yes.

Q. Where is the base line you had when you made the survey of this grant out there?

52 A. I can't tell you now, because I had so many points that I can't keep them all in my head, you understand.

Q. What is the difference between a chain and a cord?

A. A cordel?

Q. Yes, sir.

A. A chain is 66 feet and a cordel is $137\frac{1}{2}$.

Q. Is the line from the initial monument and the northeast centre monument 63 cords long?

A. It is more, I think.

Q. How much more?

A. That I am not prepared to say, but I know it is more.

Q. Did you pay any attention to the distances called for in the expediente in cordels?

A. No, sir; I paid no attention to distances at all.

Q. None at all?

A. No, sir; not in the expediente.

Q. This map is made on a scale of an inch to the mile, is it not?

A. I believe it is, sir.

Q. And the courses and distances in chains and miles are correct?

A. I believe them to be.

Q. And fastened correctly onto the public surveys, as indicated on this map?

A. Yes, sir.

Q. Now, this distance from the initial monument to the high hill, how did you measure that line?

A. I went to the high hill and there I took my bearings from points I had up the valley; I think one was the northeast centre and the other was a monument which is this side of the Sonoita, and several other points.

Q. How many other bearings did you take at the point called "high hill"?

A. Probably ten or fifteen.

Q. After you took them did you calculate the distance from those bearings after you got them?

A. I made this map to locate this corner.

Q. How did you make that distance from the high hill 1
53 mile and 40 chains?

A. I came home and I put all my notes of triangulations down and from that I protracted the distances by protracting and scaling to these points.

Q. Did not calculate it at all?

A. No, sir; I didn't go out to cook up the business at all, sir.

Q. And made no calculations at all?

A. No, sir.

Q. Where did you get your conclusion of 1 mile and 40 chains?

A. That was what it scaled out.

Q. That is the only way you measured this ground out there, by scaling this map?

A. Yes, sir.

Q. How did you get the distance from the initial monument to the southwest centre monument on top of the twin hill; did you measure it at all?

A. No, sir.

Q. Didn't you get that by simply counting the sections? Didn't you find the location of the twin hill by the Government survey and find the location of the initial monument on the public survey and simply count the sections; isn't that the only measurement you made of that line?

A. I didn't hear you, Judge.

Q. Well, tell us how you did it. How did you measure the line from the top of the twin hill to the initial monument?

A. What?

Q. From the initial monument, I say, to the monument on top of the twin hill, how did you get that line?

A. Oh, I didn't measure it at all; I just protracted it on paper.

Q. And measured it by scale?

A. Yes, sir.

Q. And according to the Government survey. Did you use the Government survey as a basis of your map-making?

A. I made the Government survey the basis of the map.

Q. Didn't you locate the monuments as to their place on
54 the Government survey?

A. Sir?

Q. In other words, didn't you find out what part of the section, for instance, the twin hills were?

A. Yes, sir.

Q. And didn't you find out what part of a section the ledge was on—the southwest centre monument—didn't you locate that as to what part of the section that was on?

A. No, sir; I located it by triangulation.

Q. From where?

A. I can't tell you now. I can't carry all those points in my head, you understand.

Q. What did you tie it onto by triangulation?

A. When a man goes and takes 10 or 15 triangulations 5 years ago he can't carry it in his head.

Q. If you were triangulating a distance between two hills how would you get at it?

Objected to.

Q. Take two trees on opposite sides of a mountain.

A. I would run a base line at each hill.

Q. And then take your triangulations (interrupted)——

A. It all depends on how far apart the two hills were, you understand.

Q. I dropped the hills. I say take a couple of trees on opposite sides of a mountain, that you could not see one from the other, and you were to find out the distance by triangulation, how would you do it?

A. I would run a base line from one tree and take bearings.

Q. To where you could see the other tree?

A. Yes, sir.

Q. And measure that base line?

A. Yes, sir.

Q. What did you triangulate that point called "ledge" from in that way?

A. Well, I have been for the last 20 years, Judge, collecting data for a county map, and I have got these points of that map
55 fixed in their correct places, and from those points I triangulated. I can't explain it to you right now, Judge. I can probably to Mr. Flipper (interrupted)——

Q. Did you make the other map—the county map you speak of—the same way as you did this one?

A. Yes, sir; I made the county map the same way, using the public surveys as a basis.

Q. Made that in your office?

A. Yes, sir.

Q. How did you go over this ground?

A. Went on horseback.

Q. Did you get off your horse during the whole survey?

A. Oh, yes; got off at every point to take photographs and to triangulate.

Q. That was your only purpose in getting off the horse?

A. Yes, sir.

Q. Who was with you?

A. Mr. Brewster Cameron.

Q. Who else?

A. A Mexican.

Q. Did Mr. Cameron point out the monuments to you before you commenced to triangulate?

A. No, sir; he took me to two monuments and said they were—
said that he believed (interrupted)——

Q. What did he take you to, not what he believed?

A. I want to tell you, Judge Barnes.

Q. No, no; I didn't ask you that. I want to know what he took you to.

A. He took me to a monument that was lying northeast, probably a mile from the monument marked here on the high hill as the east centre monument, and he told me he thought that was the east centre monument of the grant. I told Mr. Cameron (interrupted)—

Q. I haven't asked you for this conversation and I don't want it. You have answered my question; now wait. Now, go back to the initial monument on the map. I see there some little black dots and right north of it "Abandoned place of Sonoite."

56 A. Yes, sir.

Q. Aren't there ruins of old buildings scattered over as much as twenty acres there?

A. Yes, sir.

Q. What is the material of those ruins; aren't they adobe?

A. Yes, sir, and stone foundations sticking up—several places.

Q. Stones for foundations and walls of adobe?

A. Yes, sir.

Q. Haven't some of them got dirt roofs there yet?

A. I believe some old ruins are there now that there may be roofs on.

Q. And are not the vegas or rafters overhead made of cottonwood—cottonwood timber?

A. I don't remember about that. I couldn't tell that.

Q. You say there are evidences of stone foundations there scattered over fifteen or twenty acres?

A. Yes, sir; covering a good twenty acres, and maybe more.

Q. Yes, and all the walls, except some of the foundation walls, are adobe?

A. Yes, sir.

Q. No stone walls?

A. I never saw any stone walls there.

Q. Are there any evidences of any stone walls tumbling down?

A. Yes, sir; stone corral walls upon the hills.

Q. How far away?

A. Probably a quarter or half a mile. There are two different ones.

Q. How large are those corrals or those ruins of corrals?

A. Well, probably, as near as I can remember, 200 feet square.

Q. And half or a quarter of a mile away?

A. Yes, sir.

Q. Did you see any evidence of old broken pottery, such as the Indians break up, around there?

A. I noticed pottery scattered all over the country everywhere.

Q. But any more at this particular place than you found everywhere on the mesas or about the country?

A. Not that I noticed.

57 Q. Didn't notice any?

A. None.

Q. When you got to the top of the high hill you say you found a monument?

A. Yes, sir.

Q. Describe that monument that you saw there.

A. Well, it was an old monument of stones.

Q. How large stones were they? Have you a monument of that particular one?

A. Yes, sir; here is a photograph (referring to photograph already in evidence). It is hard work to describe stones.

Q. Are they too large for a man to lift?

A. Some are large and some are small; none but what anybody could take up and bring them there.

Q. Now, taking the size of the man in this picture; he is an ordinary-size man?

A. Yes, sir.

Q. Well, that would indicate the size of the stones in proportion to that man?

A. No; you can't do that. You can't estimate the size of the stones from the size of the man, because the man is away from the stones.

Q. Taking that pile of stones, couldn't an ordinary man lift and carry away any one of them?

A. Yes, sir; every one of them; no trouble in the world.

Q. Now, about how high up was the pile of stones above the natural lay of the ground?

A. Oh, I don't know; maybe a foot or eighteen inches.

Q. How large an area would the pile of stones cover?

A. Perhaps three or four feet. I can't remember just now; I didn't measure it.

Q. Was there any evidence of any mortar or cement of any kind there?

A. No.

Q. Now, if you stood at that monument and took a survey
58 around you, say, for a circle of three hundred feet, would there be any other piles of stones within that circle?

A. I went to the top of the hill for the purpose of seeing whether there was any other piles of stones up there and I didn't find any, but coming down over the bench, at what distance I can't hardly tell, but maybe three or four hundred feet or maybe a quarter of a mile, I think we found three piles of stones in a row; but from the monument where I was you could look down and see the "quates," but these piles of stones were out of sight.

Q. Now, suppose we were on the high hill and should start to walk from there to the initial monument, where would the three monuments you have just spoken of be on that journey?

A. From the best of my recollection, on your way up you pass right by them.

Q. Go the other way from the initial monument to the high hill, and then where would they be?

A. On your way up.

Q. How far from the initial monument?

A. I couldn't tell.

Q. Half way?

A. More than that.

Q. Two-thirds of the way?

A. Yes, sir; probably more than that. They were about three hundred yards down.

Q. From the high hill?

A. Yes, sir.

Q. Were the piles of stones there about like the pile on top of the hill—about the same kind of a pile of stones?

A. Yes, sir; similar stones, and you will find them on every hill.

Q. There are piles of stones all over there?

A. Yes, sir; ninety-nine per cent. of the hills are covered with piles of stones.

Q. Aren't there mineral monuments and Indian monuments?

A. Yes, sir; you find them everywhere.

Q. In other words, you can find piles of stones everywhere
59 you please?

A. I wasn't looking for piles of stones; I was looking for a monument on top of that hill.

Q. In other words, you didn't see fit to choose any other pile of stones to triangulate from?

A. Yes, sir.

Q. There was plenty more piles to pick from?

A. Finding that monument there, I naturally supposed that monument to be the one.

Q. I am not asking you with reference to this expediente, but what you did on the ground. I want to know whether the expediente and measurements of the lands took you to these monuments or whether the monuments you found there and which were pointed out to you took you to the measurements; which was it?

A. The monuments I found there took me to the measurements.

Q. And you picked out the particular ones to guide you to these measurements?

A. Yes, sir.

Q. And after you did that, then you put it on the map by means of a scale?

A. I knew it was no use to measure so many cordels as called for in the expediente, it didn't bring you anywhere, and so we looked for the places called for and measured back.

Q. You found by experience that if you attempted to measure the expediente by cords you could not measure it at all?

A. I am perfectly satisfied they never measured them at all.

Q. If you took the expediente and used the same cordel they used, you could not measure it on the ground; isn't that a fact?

A. I think you are right; yes.

Q. You started from the initial point, and did you journey from the point called the initial monument to the northeast centre monument?

60 A. No, sir; after locating the initial point I then went to the northeast centre monument.

Q. You did journey over that line from the initial monument to the northeast centre monument?

A. Yes, sir; I went down and went up the road in the valley; I didn't go straight across through the hills.

Q. Is there a spring near the northeast centre monument?

A. About a mile from it down the valley.

Q. In which direction?

A. Southwest.

Q. Towards the initial monument?

A. Yes, sir.

Q. About a mile towards the initial monument there is a spring?

A. Yes, sir.

Q. Is there any spring nearer the northeast centre monument than that spring?

A. I never saw any.

Q. Now, as you were travelling towards the northeast centre monument there was a valley running towards the east?

A. Yes, sir.

Q. Would you be looking up that valley or down the valley, the way the water run?

A. We left the spring to the left going up the valley.

Q. How was the valley running, towards the east?

A. Yes, sir.

Q. Do you mean the valley in which the water run towards the east?

A. No, sir.

Q. How did the water run in it?

A. Down the Sonoita.

Q. Towards the west?

A. Yes, sir.

Q. But the depression of the valley bears towards the east?

A. The valley keeps on about the same course for ten or twelve miles and then it suddenly turns off towards the east, going to Harshaw.

Q. That is one of the inlets to the Sonoita?

A. Yes, sir.

Q. And the water runs towards the Sonoita?

A. Runs into the Sonoita.

61 By Mr. FORD:

Q. You do not mean there is any water running in this valley?

A. No.

By Mr. BARNES (resuming):

Q. I am talking about the water-shed.

A. I understand what you mean.

Q. Now, when you went on top of the high hill, did you find any other pile of rocks besides the one you have spoken of as having found there?

A. Right on top a little pile of rocks about that high (indicating about a foot or 15 inches).

Q. More than one?

A. No, sir; except away down to the bottom, I found some there.

Q. How far away would you have to go to find a pile of rocks?

A. Probably three or 400 feet; maybe more.

Q. There you did find a pile of rocks?

A. I saw them there, sir.

Q. When you got on top of the hill where you found the monument, was there more than one pile of rocks there?

A. No, sir; only just that old pile of rocks.

Q. For how far away?

A. Didn't find any but that that I am aware of.

Q. Only one?

A. Yes, sir.

Q. Coming over to the initial monument and then on the trail toward Tubac, how many piles of stones did you find for half or three-quarters of a mile?

A. We took the trail from the old hacienda and went towards Tubac and didn't pass any monuments except one or two mining monuments, which are very small, till we come to the cazadero.

Q. Who called it the cazadero?

A. Mr. Cameron told me that was the cazadero.

62 Q. The expediente said something about a cazadero?

A. Yes, sir.

Q. Then Mr. Cameron and the expediente both said it was the cazadero?

A. Yes, sir.

Q. And you said so?

A. And I believe so.

Q. Yes; that is pretty good. Then you came to the point called the ledge, and there is a little round valley or something of that kind?

A. Yes, sir.

Q. Didn't the expediente say something about a little round valley?

A. I think it does.

Q. Wasn't that what makes you think it is a round valley, because the expediente says so?

A. No, sir; in making the survey of the Calabasas grant I came up and run around that, and if I had the map here I could show you the valley—the fact of the mesa coming away out towards the other mesa and the ground goes in kind of this way (illustrating by circular motion of the hand) and forms a little valley there; yes, sir.

Q. You know that country pretty well there?

A. Yes, sir; I know it very well.

Q. Is that the only place around there where the hills bend in and make a little round valley?

A. Yes, sir; the only one that I know of.

Q. The only place around there?

A. Yes, sir.

Q. You did not go on top of the twin hills?

A. On top of one I went afterwards.

Q. Did you see any monument there?

A. No, sir.

Q. Did you see any monument with a cactus in it?

A. No, sir; I didn't see that.

63 Redirect examination:

Q. Do you say that you did have a base line for these triangulations?

A. Yes, sir; I did.

Q. And when you made this protracting and scaling was the result correct or not?

A. Yes, sir.

Q. What was it?

A. I have got no reason to make it otherwise than correct.

Q. And was the result correct?

A. Why, of course it was. I have no reason to make it otherwise than correct.

Q. In speaking of water running in the valley, you don't mean there is water running in the valley to Harshaw?

A. No, sir; only in the rainy season.

Q. Where does the running water start?

A. From a big spring, and comes out about a mile, more or less, from Tom Sheen's house, the northeast centre, the adobe point.

Q. Answer again, if you please, the question counsel asked you, why you took these particular monuments as the monuments for that map?

A. Because they answered the calls of the expediente, and that is what I went there for.

Q. If they hadn't satisfied you as being the original call monuments (interrupted)——

A. I should not have taken them; no, sir.

Q. You stated that Mr. Cameron pointed to you two places, did you not?

A. No, sir. Mr. Cameron pointed some places to me that he said he believed were the monuments of the grant, and I told him I didn't believe they were; that I wanted to go to the centre and see for myself, and when I went to the centre and read the calls of the expediente, I pointed out to Mr. Cameron where the calls would be, and we went straight to the high hill against the red mountain, and it is unmistakeable, you understand, and there we found this monument.

64

Q. State whether these monuments were arrived at by you in your best judgment or whether you took them because you were told to do so?

A. No, sir; I took these as the monuments because they answered the calls of the expediente.

Recross-examination:

Q. In answering the calls, did you not regard distances as quite an important fact?

A. No, sir; not in the expediente.

Q. Didn't you regard direction as *in amportant* fact?

A. Yes, sir. I tell you I have surveyed a great many of these grants, and I find these fellows paid very little attention to measurement or direction.

Q. And for that reason you didn't pay any attention to direction or to distance?

A. Well, you see, from here to here (indicating) is not exactly what they called it, but you will find all grant monuments are in line one with another, and they always go to some high point where they can see the others.

Q. Looking towards the northeast from the northeast centre monument, is the country valley or is it hilly and rough—looking to the northeast beyond your map, looking towards Crittenden?

A. It is rolling hills.

Q. And a valley between those hills?

A. Yes, sir.

Q. The Sonoita valley extends on up beyond there?

A. Yes, sir; all up there.

Q. Many miles?

A. Yes, sir.

Q. You have stated you didn't pay any attention to courses or distances. Did you pay any attention to the quantity described in the expediente?

A. No, sir.

65 Q. Then you paid no attention to distance, to direction, or quantity, either one, in locating this grant and making this survey?

A. I paid attention to a certain extent to direction, but as to distances or quantity I did not, because, from my experience, I found that you would be only throwing away your time to do it.

Q. Your survey is correct as mapped here?

A. Yes, sir.

Q. And you stand by that as being a correct survey of the land described in the expediente?

A. That is what I believe it is.

Q. In the way you did it?

A. Yes, sir.

Q. Does this survey correspond with the survey made under Mr. Wasson?

A. No, sir.

Q. The other one is wrong, then, is it not?

A. No, sir; it is right as far as it is made, for what is was made for.

Q. But it does not agree with yours?

A. No, sir.

By Mr. FORD:

Q. What was it made for?

A. His was made for quantity.

Q. And how was his made?

A. Well, Deputy John H. Harris had regular instructions when he went out to make it. He was to go so far and take in a certain quantity of land—a league and three-quarters, or whatever it was.

Q. Do you know whether it was made with reference to any natural objects described in the expediente?

A. No, sir; I do not know exactly what his instruction were, but the instructions we used to get was to pay no attention to the calls of the expediente, but to go and make a survey that was cut and dried in the office before I went out; yes; you might call it that.

I was told to go to a certain point, and go far east, north, 66 west, and south and make a survey, and Mr. Wasson's instructions were to make that according to the calls of the expediente, but he would not do it.

Q. You do not mean the instructions from him to his deputies?

A. No, sir; the instructions from the General Land Office, made in 1881.

Q. And your survey differs from the one made under his direction for the reason that yours was not cut and dried, as you call it. Do you mean to say so?

A. I didn't catch that.

Q. Well, never mind about that. That's all.

J. E. McGEE, a witness called and sworn on behalf of the defendant, testified as follows:

Direct examination.

By Mr. FORD:

Q. Please give your name, age, and residence.

A. John E. McGee; 46 years; residence, Tucson.

Q. Where did you live prior to living in Tucson?

A. San Francisco.

Q. And where prior to that time?

A. I was born in the State of Ohio.

Q. Did you ever live in the southern part of Pima county?

A. Yes, sir; a portion of my time in Arizona.

Q. Please state where.

A. On the Sonoita creek.

Q. Where is that?

A. It runs through township 22, range 15 east.

Q. Can you state where you lived with reference to the map before you (Exhibit "I")?

A. Yes, sir; I believe it is section 22.

67 Q. When was that?

A. 1877 or 1878; a part of both years.

Q. Had you heard before that time or did you hear at that time of a San José abandoned mission?

A. Yes, sir.

Q. Please state, if you can, where that mission was located, according to what you heard, with reference to that map.

A. I can state where I was told that the San José de Sonoita mission was.

Q. Yes, sir; if you please.

A. It was within the south half of the northeast quarter and the north half of the southeast quarter of section 14, township 22, range 15 east. I know that because this is my paper (producing document), for I entered this land for these people at the time.

Q. Is it or is it not correctly designated on this map, Exhibit "I," according to township and section, mean?

A. About.

Cross-examination.

By Mr. BARNES:

Q. You say the abandoned mission, as you heard it described and spoken of, was in the south half of 14?

A. It was within the south half of the northeast quarter and the north half of the southeast quarter; it is within that 160 acres and near about the centre of it.

Q. About how much area do those adobe ruins cover?

A. There is only one adobe ruin there. The rest are merely walls up even with the ground.

Q. And scattered over how much area?

A. Oh, 200 yards up and down the river or creek.

Q. How far away from the river?

A. Oh, there was only one little tier; there wasn't over five buildings altogether.

Q. When did you first go to the valley?

A. 1875.

68 Q. Did you know a good many people down there?

A. Yes, sir; I know who lived there then and in 1876.

Q. At that time did the people know where the grant monuments were?

Objected to.

Q. Did they say anything to you about having looked for the monuments and not knowing where they were?

Objected to because in the absence of the claimant.

Question withdrawn.

Q. What did the people down there say about knowing anything about the grant monuments, if anything?

A. They had searched for them, they told me, but never could find any.

Redirect examination:

Q. That was in 1876?

A. 1876 I had that conversation with several parties who lived there.

Q. Do you know that this grant had never been filed till 1880, or don't you know about that?

A. I did not; no, sir.

Q. You are not interested in the confirmation of it, are you?

A. Not in the least.

Recross-examination:

Q. You never heard of any before it was filed?

A. Yes, sir; they talked about the grant in 1876 and '75.

Q. I know; but about the monuments?

A. I never heard of them at all.

By Mr. Ford:

Q. You heard of this old mission from everybody down there?

A. I heard of that in San Francisco.

69 By Mr. Barnes:

Q. Did they tell you in San Francisco where the mission was?

A. Only what I read in books.

By Mr. Ford: Defendant Ainsa reads in evidence the following, which purports to be a correct translation, and is admitted so to be, of what appears on the papers purporting to be the title papers of the Calabasas and Tumacacori grants (reading):

"In the month of June, 1821, there was measured to Don Leon Herreros, of this vicinity, one and three-fourths square leagues in the place of San José de Sonoita, by denouncement made before the senior commandante general of this pimeria, Brigadier Don Antonio Cordero, he being intendente of these provinces, which measurement of said leagues down the cañon of said Sonoita terminated in front of two cerritos (little hills) names 'las cuates': in this direction it is bounded by the lands of the mission of the pueblo of Tumacacori, and in consideration of the fact that when said measurements were made in order not to encroach on the lands granted to the said Tumacacori, they only had in view the measurement made of the 'fundo' and two 'estancias,' it was believed that so far from encroaching on the measurements of the Tumacacori there remained a vacant space of one league, a little more or less. However, father, minister of said pueblo of Tumacacori, Friar Ramon Liberos, having represented in expediente that besides the 'fundo' of four leagues and the two 'estancias' measured, more land was given to said pueblo by his excellency the Senor Don Alejo Garcia Conde, in both directions, he being intendente of these provinces, and in consideration of the fact that in the direction of the east there is some doubt as to the true boundary, in order to avoid difficulty and the necessity of suits, the father minister Friar Ramon Liberos, in the name of the pueblo and Don Leon Herreros, have agreed that the line dividing these lands, the one from the other, shall be the upper part of the cañon of Sonoita at the hill (loma) called 'de las cuetes,' and that besides this that for all time the said Herreros may keep stock on the lands pertaining to the same, and the piece of agricultural land in the said 'cañon abajo,' at no time shall be

cultivated by any one except by agreement, save the Indians of the pueblo, and by no other persons. To which the parties agreed before me the Captain Don Elias Gonzales, commandant of the presidio of Tubac, also asking that this proceeding be entered at the end of each of the expedientes in possession of the interested parties as a testimony in the matter. Whereupon the parties signed with me and the assisting witnesses in the absence of a notary public, according to law, on the 10th of January.

(Signed)

IGNACIO ELIAS GONZALES,

For DON LEON HERREROS.

JOSÉ MA. SOTELO.

FRY. RAMON LIBEROS.

Ass't: TRINIDAD YIGOYEN.

Ass't: JOSÉ ANTONIO SOTELO."

By Mr. REYNOLDS: It may go in as a correct translation, and if we find it is not, we will submit translation corrected.

By Mr. FORD: I now wish to reserve the privilege of calling and examining Mr. Colin Cameron as a witness. His testimony will be short. I also wish to recall Mr. Hopkins, after he shall have examined his report on file in the surveyor general's office. With those exceptions, that is our case, and we rest.

H. O. FLIPPER, a witness called and sworn on behalf of the United States, testified as follows:

Direct examination.

By Mr. REYNOLDS:

Q. Where do you reside?

A. At Nogales, in this Territory.

Q. How long have you lived in this Territory?

A. Since 1885—about nine years.

Q. What is your business?

A. Civil engineer.

Q. How long have you been engaged in that business?

A. Since 1873.

Q. Where have you been so engaged?

A. I worked for the Government of the United States, and since then in Mexico; the last 10 or 11 years in Mexico.

Q. What work have you been doing?

A. Surveying public and private lands.

Q. Were you in the employ of the Mexican government?

A. I was not; no, sir.

Q. For whom were you engaged?

A. I was surveying lands under concessions from the Mexican government.

Q. Are you fully familiar with the system of surveying lands in Mexico?

A. I am, sir.

Q. I will get you to state what your present employment is.

A. I am employed as special agent of the Department of Justice, in connection with the land court.

Q. Have you been employed to survey different grants under my direction?

A. I have.

Q. And have you had occasion to overhaul the Sonoita grant?

A. I have.

Q. Do you know where it is?

A. I do, sir.

Q. How long is it since you overhauled it?

A. I overhauled part of it in 1892 and the other part of it recently, within a month.

Q. Do you know where the place called the abandoned place of Sonoita is claimed to be?

A. I do, sir.

Q. Have you ever been to it?

A. I have, sir.

Q. Did you have in your possession the expediente of title in this case?

A. I did, sir.

Q. And did you undertake to make a survey of that grant based upon that expediente?

A. I did.

Q. And did you make such survey?

A. I did.

72 Q. Did you undertake to retrace the lines laid down on this expediente?

A. I did, sir.

Q. You did not do it by triangulation?

A. I did not.

Q. Did you use an instrument?

A. I did.

Q. And a chain?

A. I used a steel tape, which is better.

Q. When was this?

A. October, 1892.

Q. Who was with you?

A. Mr. Richardson, of Crittenden; Mr. Linder, Mr. Joseph Wise, of Calabasas, and Mr. Piper, of Crittenden.

Q. Describe that centre monument which Mr. Roskruge claims as the centre monument—the place of Sonoita.

A. I went to the centre monument claimed by Mr. Roskruge and marked on this map here, and found his monument and made a thorough examination of the vicinity there, and I was satisfied that was not the place.

By Mr. FORD: We want, now, at the very start, to make an objection to this witness combining the functions of a witness with those of a lawyer. So far as our experience goes, he seems to be unable to state facts. We submit it is not testimony for him to say he is satisfied this was not the place. We insist that he shall state

what he found, and what he did and what he did not do, and it is highly improper for him to state that he is satisfied this was not the place.

By the COURT: Yes; that standing alone is not competent, but if followed by other evidence it may be competent.

Q. Upon what do you base your opinion that this is not the place?

A. In the first place, the original surveyor of this grant made a reconnaissance of this grant, and he says he found some walls standing there. When I went there I found some houses with
73 roofs on them. This reconnaissance by the original surveyor was made in 1821. Then there were walls there with no roofs on them. When I was there in 1892 I found roofs on the walls, held up with cottonwood logs which were perfectly sound. They could not possibly have been there in 1821. That satisfied me, and I went to search for that place and didn't find any other place. Then I started from that point and I took the course laid down on that map and chained the line. Mr. Richardson and Mr. Linder were the chainmen. The country is not rough at all, and I followed behind them. We chained to the northeast centre monument, which is supposed to be at the end of that distance—2 miles and 73 chains—and there is no monument there; there is a little adobe house.

Q. Then, as a matter of fact, you did chain that line?

A. Yes, sir; I did absolutely chain that line.

Q. How long was it?

A. I chained out 63 cords; that is the distance in the expediente.

Q. Where would that leave you with reference to Roskrug's northeast centre monument?

A. About three-quarters of a mile southwest from it.

Q. In other words, you fell short of it?

A. Yes, sir; by about three-quarters of a mile.

Q. How did the end of the 63 cords bring you with reference to the spring at the foot of some low hills?

A. I was on top of a mesa and there was no valley and no spring. I made another measurement at that point.

Q. What was it?

A. There being no spring and no valley there, I didn't think—advisable to measure towards the east, but I did measure west. I
74 actually chained 25 cords west across the valley in search of a monument. At the end of that I found nothing. I searched around over the hills there and found no monument at all. There is a white limestone hill there, but nothing resembling a monument.

Q. Did you ever go to the northeast corner monument as established by that survey of Roskrug's?

A. On the chain of hills?

Q. This one here (indicating on map).

A. That is the northwest monument; I have been to that; yes, sir.

Q. What is there there?

A. There is a small pile of stones there.

Q. Describe it to the court.

A. It is a small low pile of stones about a foot or eighteen inches high and probably three feet in diameter—three feet across. Not very far from it is another pile of stones.

Q. How far?

A. From fifty to a hundred yards. I don't remember the distance now. The hill is covered with short grass that at that season of the year was ripe and was ordinary grass color, giving the hill a whitish appearance at a distance. There was nothing whatever, however, to distinguish it from the hills in the vicinity; nothing whatever, sir.

Q. Any other piles of stones in that immediate vicinity?

A. The monument and the other pile of stones I have described.

Q. I will get you to state from your experience of that country as to whether or not there are a great number of just such piles of stones all over that country.

A. A great many of them everywhere.

Q. Do you know what the origin of them is?

A. This — called the northeast monument; I really don't
75 know what for, but I suppose they were built by Indians.

Mr. Ford objects to the witness's supposition.

Q. What is the general supposition as to the origin of those piles of stones all over that country and Sonora?

A. That they were built by Indians.

Q. And are there great numbers of them all over that country?

A. Any number of them. I counted fourteen of them within a quarter of a mile from that high hill there. They are peculiar in their construction.

Q. Describe the construction of them.

A. There is a pile of stones probably two or three feet across and at the four corners of a square—the sides of it about six feet—there is another pile of stones, and all the groups are built in the same way. I can describe them better by a sketch than in words.

Q. Very well; sketch it on a piece of paper and give it to the stenographer.

A. (Witness did so, and the same was marked "Flipper's Sketch.")

(This "sketch" was not filed.—CLERK.)

Q. Now, what other lines did you run?

A. I completed that line from the initial monument to the north centre monument up to the distance of two miles and 73 chains. There is a house there and no monument. I stopped my measurement there, but I continued, because in the original expediente it stated the survey stopped there because the country is rough and inaccessible. It is right the contrary; it is right up the Sonoita valley, and you can chain there for fifteen miles; and that induced me to believe that the country did not conform to the expediente absolutely in anything, in fact. I did afterwards chain a ditch line through there for Mr. Richardson.

76 Q. What other line did you run?

A. I came back to the initial monument and run the line to the high hill. The reason I did that was I could see from the mesa; measuring the upper line, I could see two monuments probably a quarter of a mile apart—two large monuments—both on a point of the hill, and in order to determine which one Mr. Roskrug had taken, I took the course and chained the distance from the initial monument to it.

Q. What was it?

A. The distance he gives here is 1 mile and 45 chains, which is considerably in excess of the 25 cords.

Q. Now, with reference to a monument around there?

A. In the immediate vicinity of that monument on the high hill there is no other monument, but within a radius of a quarter of a mile I counted fourteen piles of stones.

Q. How far is a cord? How many cords are there in one mile and 40 chains?

A. 1 mile and 45 chains it is here on this map. It is fifty cords and a small fraction—125 chains.

Q. Then it is twice the width of the call in the expediente, is it not?

A. Yes, sir.

Q. Then, running 25 cords from the initial point towards that hill would take you just halfway?

A. Just about halfway; yes, sir.

Q. Now, running down the Sonoita to make up a league and three-quarters, where would it take you, allowing 25 cords on either side of the centre line?

A. Running down the Sonoita?

Q. Beginning at the northeast centre monument and taking a width of 25 cords, how long would the parallelogram have to be to give you a result of a sitio and three-quarters?

A. 350 cords. That would be the length of the side of the parallelogram.

77 Q. Then, running a parallelogram northeast and southwest, with the north centre monument as the centre, 68 cords from the initial monument, would it correspond with the lines or any of the lines laid down in Mr. Roskrug's survey?

A. It would not correspond with any of them. The survey is incorrect, in the first place.

Q. In what?

A. In that it does not close.

Q. Explain that fully now.

A. It is hard to explain. If we start at the northeast centre monument, for instance, and run around the grant with the courses and distances which he gives, the last line will not come back to that monument. It is what is called not closing, technically.

Q. That comes from what fact?

A. The fact that it is not correctly made.

Q. In other words, you mean there is no base line with which to make connections and measurements?

A. No, sir; what Mr. Roskruge means by "triangulations" is not triangulations.

Q. It is what you call "scaling" the country?

A. Yes, sir; scaling.

Q. Can all those lines be run from the north centre monument? What lines cannot you run from the initial monument?

A. The line from the initial monument to the north centre monument can actually be chained on the ground. From that point to the northwest and northeast corners can actually be chained. Those are the only lines that can be chained.

Q. Did you examine around the "cazadero"?

A. No, sir; I did not go to the cazadero.

Q. Were you down to the twin hills?

A. I have been there; yes, sir.

Q. How about the monument there?

78 A. There is a monument on the west one of those twin hills that has a cactus in it. If that cactus is any evidence off the age of the monument, the monument is not over nine years old.

Q. Were you ever at the northwest corner monument, the hill?

A. No, sir.

Q. How do you account for the peculiar formation of that grant on the west end, as to the way Mr. Roskruge has laid it down? Taking the expediente, can you account for it?

A. No, sir; I cannot. I have been to the monument marked "ledge."

Q. What about that?

A. There are several places in the cañon that might be taken as a ledge. There is no distinctive place there to show that it is the one described in the expediente, but there are several such places as will fill the conditions of the description.

Q. Where are they?

A. One or two below that point upon the stream and one or two above it.

Q. At the southeast corner monument—chain of hills, it is called—were you ever there, in that valley?

A. Yes, sir; I have been there.

Q. The one that goes down the road to Harshaw?

A. Yes, sir.

Q. What is there with reference to monuments?

A. We went out from the northeast centre monument there to that monument. It is on top of the hill, and it is the only monument right at that immediate spot, but right across the arroya is a mesa with quite a number of those monuments. There are ruins there with a trench about 400 yards long, with a stone sunken into the level of the ground at each end of it, evidently a place where the Indians played games, and all over that country you find small piles of stones similar to this, one that is called a monument.

Q. At the chain of hills there?

A. Yes, sir.

79 Q. Like that one, you say?

A. Yes, sir.

By Mr. REYNOLDS: That is all.

Cross-examination.

By Mr. FORD:

Q. Will you look at the point on the map designated as the abandoned place of Sonoita?

A. Yes, sir. (Witness did so.)

Q. You say there are some houses there now that are comparatively modern?

A. Yes, sir.

Q. You do not know what was there in 1821?

A. I know what the expediente says there was there.

Q. What is that?

A. The correct translation is "walls."

Q. You do not know what sort of walls?

A. I know that walls and houses are two different things.

Q. You would not pretend to say there were not walls there in 1821 of an abandoned mission, would you?

A. I do not know where you get the idea of its being a mission; there is not a single solitary word about mission.

Q. Well, abandoned place of Sonoita, then?

A. All right, sir.

Q. Are you prepared to say whether there were walls there in 1821?

A. The expediente says there were walls there in 1821.

Q. And do you know there was not?

A. No, sir.

Q. Do you know whether in 1876 and 1877 and 1878 this place designated on the map as abandoned place of Sonoita was so called by hearsay?

A. No, sir; I wasn't in the country in 1876; I haven't said that I was.

Q. In going up the valley from the abandoned place of Sonoita to the northeast centre do you say you could not find any spring?

80 A. At the time I was there there wasn't a solitary spring anywhere in that distance.

Q. Have you examined it since then for the purpose of finding a spring?

A. I have not; no, sir.

Q. Have you made a survey of this grant?

A. Since 1892—no, sir.

Q. And at that time you could not find a spring?

A. There was no spring there; no, sir.

Q. Where does the water start, northeast of the abandoned Sonoita?

A. The water was running there probably a mile or a mile and a half below. Well, probably halfway between the initial monument and the northeast centre monument.

Q. You say "probably." Do you know with any accuracy?

A. I know absolutely the water was running in the arroya, but that was not a spring. There is water running in the arroya, about halfway between the initial monument and the northeast centre monument.

Q. You cannot designate it any more accurately than "about halfway"?

A. No, sir; I cannot.

Q. In going northeast from the abandoned place of Sonoita, the course and distance laid down on this map, aren't there some low hills?

A. There is a mesa; the line runs over a mesa or table-land or plateaux.

Q. Are there not some low hills?

A. The expedient calls for "lomas." You may translate it hills or mesas.

Q. I won't translate it at all; but I want you to answer the question I ask you, yes or no, if you know. Going northeast from the abandoned place of Sonoita the course and distance set down in this expediente, are there or are there not some low hills?

A. I don't think I understand the question. Do you mean along the line or at the end of the line?

81 Q. At the end of the line?

A. Yes, sir; there are some hills at the end of the line.

Q. At the end of this line the course and distance laid down?

A. There are some low hills; yes, sir.

Q. Going the course and distance laid down on this map from the abandoned place of Sonoita, is there not a valley which turns to the east—the road to Harshaw?

A. The road to Harshaw turns to the east, but I don't know whether the valley turns.

Q. Is the valley going to Harshaw correctly designated on this map the road?

A. Yes, sir; it is.

Q. Is there any other valley which turns and goes to the east between this central point taken on this map and this road to Harshaw?

A. There is not; no, sir.

Q. Going from the point designated on this map as the northeast centre the course and distance laid down on this map, is there at the end of that line a monument on a high white hill?

A. There is a monument there; yes, sir.

Q. Going on this map the course and distance laid down from the northeast centre monument to the southeast monument, is there a monument?

A. There is a monument there; yes, sir; I have so said all along.

Q. Is the monument on the northwest corner a high hill—high white hill?

A. The northwest corner?

Q. Yes, sir; is it not a high white hill?

A. This point here (indicating on map) is marked for the north-west corner. They are badly marked.

Q. Northeast it should be. Is it not a high white hill?

A. It is a hill, and when I was there the only indication of whiteness was the color of the grass. There is any number
82 of hills around it the same color. There is a white limestone hill down here.

Q. Well, there is a white hill at the end of the line, is there?

A. Not a white hill.

Q. A high hill?

A. Yes, sir; a high hill.

Q. And a monument there?

A. Yes, sir; and there are high hills all around there; some of them higher than that.

Q. Returning to the abandoned place of Sonoita, you say you did not go to the place marked on this map the course and distance at the end of the line "cazadero"?

A. I did not; no, sir.

Q. Going from the abandoned place of Sonoita, or the place marked as the initial monument, the course and distance marked on this map, is there at the termination of that line a monument?

A. There is. I have said so.

Q. Please state, Mr. Flipper, the topography of that country leading up from the west to this east centre monument and still further east of it towards the mountains. How does the country run there?

A. The Patagonia country runs east of that point called "high hill." This is a spur of the Patagonia mountains.

Q. Is the monument there on a place before reaching the high red mountain—is there a high red mountain beyond it?

A. Before reaching it?

Q. Yes, sir.

A. No, sir.

Q. How is that?

A. There is another monument before you reach that, on a high red hill to the north of this a little.

Q. Is there a high red mountain east of this high hill?

A. The whole slope of the Patagonia range along there is red-ish.

Q. Then there is a high red mountain, is there?

A. Yes, sir.

Q. You testified in your examination before, I believe, that
83 you made no other measurements of this grant?

A. I have described here now the measurements that I made.

Q. Yes. Did you measure from the initial monument to the southwest monument?

A. I did not; no, sir.

Q. The "twin hills;" did you measure that point?

A. I did not.

Q. Mr. Flipper, please describe as clearly as you think right how the twin hills are and what relation they bear to each other and to the rest of the country?

A. Well, they are two small hills there. They are not very much alike. The east one is a sharp point and the west one is rather flat and broad on top.

Q. Are they like each other, Mr. Flipper?

A. No, sir.

Q. Are they different from any other two near there?

A. They are different from any other two that are near together. The east one is a cone. There is quite a number of those in that section.

Q. You say they are different from any other two together?

A. Yes, sir.

Q. What does the word "cuates" mean?

A. Twins.

Q. You say there is a modern or recent monument on top of these hills, or on top of one of them?

A. I should judge it to be modern; yes, sir.

Q. Do you know whether the expediente says a monument was put there, or don't you know?

A. The expediente does not say a monument was placed anywhere. It says a cross was put in this particular place.

Q. It does not say there was a pile of rocks put there?

A. No, sir; it does not. It says a cross was put there.

Q. Going from these twin hills the course and distance designated on this map, is there at the termination of that line a ledge
84 that ends in high boulders?

A. Going east?

Q. I did not say east; I said going from the twin hills the course and distance designated on this map, is there at the end of that line a ledge terminating in high boulders?

A. There are two lines there with courses and distances; which one do you mean?

Q. This is northwest (indicating on map).

A. No, sir; there is no such line marked here on this map; it is marked "south 57 degrees east."

Q. I mean this line (indicating)—this place here. Is there a ledge that ends in high rolling boulders?

A. There is.

Q. And is there a monument there?

A. Yes, sir; there is.

Q. Continuing that line the course and distance mentioned on this map, is there at the termination of that line marked at the northwest monument a hill?

A. I did not go to that point.

Q. Did not go there?

A. No, sir; I did not.

Q. Do you know how many of these points in the survey were arrived at by estimation, if any were?

A. I think these two southern ones, from this point (indicating) to the ledge and from "ledge" to "twin hills." The expediente will show that; also the one at the "cazadero." I am not certain, but the expediente will show.

Q. I will ask you if you remember testifying in the case tried in the district court in this city and recollect whether this question was asked you: "You testified yesterday, didn't you, that at the point designated on this map as southwest monument there are two hills alike each other," and whether you answered, "Yes, sir"?

A. I do not remember whether I answered yes, sir. They
85 are similar to each other; they are twin hills; they are not alike; one has a flat top and one a cone.

Q. And they are different from others near them?

A. As being together they are different from those in the vicinity because they are together.

Q. From this point, taken as the initial monument, going southwest, are there between the initial monument and these twin hills any two hills which are like these two?

A. No, sir; none that I know of.

Q. Do you know, Mr. Flipper, how far the water runs in this valley?

A. Well, it depends (interrupted)——

Q. With reference to this map?

A. It depends on the times of the year. Certain times of the year the water is running the whole length of this survey. When I was up there the water was running from the point I described here the whole length of this survey.

Q. Did you ever see the water dry in the Sonoita creek?

A. No, sir.

Q. Why do you say, then, certain times of the year?

A. Because I have been told it goes dry. I have seen it dry below this point.

Q. I am speaking of the creek as embraced within this map.

A. This is quite a long ways from where I live and I didn't go up there every day. I have been there, Mr. Ford, only twice or three times.

Redirect examination.

By Mr. BARNES:

Q. In answer to Mr. Ford's question, he asked you if you found a monument on a white hill and you answered, Yes; what did you mean by saying that you saw monuments at those different
86 points?

A. I meant to say I saw piles of stones there, not that they are the monuments described in the expediente.

Q. What can you say as to the characteristics of these piles of stones you describe as to being scattered over that country generally?

A. Yes, sir; they are. I do not want to be understood as saying they are the monuments described in this expediente. I do not believe that, and I did not say that.

Objected to as matter of belief of the witness.

By the COURT: Yes; we will determine that.

(By Mr. REYNOLDS :)

Q. Are the things which you have called monuments, and which the gentlemen on the other side have rung in so loudly as monuments, are they any different from thousands of monuments all over that country that are not called upon to mark the boundary of land?

A. There are millions and millions of them, I believe, both all over Sonora and all over this southern part of Arizona.

(By Mr. FORD :)

Q. You do not claim that there are millions of valleys that turn to the east?

A. If you go up the valley and say the valley turns the way you go up it is a clear expression. Valleys go down and then turn.

R. R. RICHARDSON, a witness called and sworn on behalf of the United States, testified as follows :

Direct examination.

By Mr. BARNES :

Q. Where do you live?

A. Near Crittenden, in the Sonoita valley.

Q. (Exhibiting map.) Look at that map lying on the table before you. Have you seen a map like that before?

A. Yes, sir.

87 Q. Did you go to the point on that map marked "initial monument" and the top of the white hill and the other corners there?

A. Yes, sir.

Q. Who was with you?

A. Lieut. Flipper.

Q. Were you ever out there with Mr. Oury?

A. Yes, sir.

Q. Did Mr. Oury point out to you the particular point called the monument on the high hill?

A. Yes, sir.

Q. What kind of a monument did you find there at that point which he pointed out to you? What did he point out to you and call a monument there?

A. A pile of stones.

Q. Describe that pile of stones.

A. Well, it looked like there was an old pile of stones perhaps a foot or a foot and a half high and 3 to 4 or 5 feet across.

Q. Was there any other similar piles of stones around there?

A. Many of them.

Q. How many of them and how near?

A. Within a hundred yards.

Q. How many within a hundred yards?

A. Perhaps one or two.

Q. Similar to this pile?

A. Yes, sir. Well, say within a quarter of a mile there was quite a number.

Q. If you should walk from that pile of stones that Oury pointed out to you to the pile of stones at the initial monument, would you go near any other pile of stones similar?

A. Yes, sir.

Q. How many on that route—one or more?

A. I would say five or six.

Q. Now, did you go over to the point on the trail to Tubac, the west centre monument, at any time—the place they call the cazadero, or something of that kind?

A. Yes, sir; I have been there; I went there with Mr. Oury.

88 Q. Did he point out to you a pile of stones there?

A. Yes, sir.

Q. What kind of a pile of stones did he point out to you?

A. It was the same old monument.

Q. Did he point that out to you as the pile of stones he had taken as the west centre monument?

A. Yes, sir.

Q. How was that located with reference to the trail or anything of that kind?

A. It was located right at the side of the old trail that leads from the valley over toward Salero—Tubac.

Q. When do you remember first to have gone over that trail?

A. Oh, I have been over that trail quite a number of times.

Q. About how long ago was that?

A. I couldn't tell you exactly.

Q. When you first went over it, was that pile of stones there?

A. Yes, sir.

Q. About how long ago was that?

A. Several years ago, anyhow.

Q. Going to the northeast centre as pointed out by Mr. Oury, what did you find there—did you find anything at all there?

A. No, sir; I think not.

Q. Is there a house there?

A. Yes, sir; an adobe house that belongs to Sanford.

Q. Now, looking off towards the north and west from that point and going up, did Oury point out anything to you up there at the corner?

A. Yes, sir.

Q. What did he point out to you?

A. An old pile of stones.

Q. What kind of a pile of stones?

A. Just about the same as the others.

Q. Did you see more than one pile around that neighborhood?

A. Yes, sir.

Q. How many?

A. 2 or 3 or 4 different places.

89 Q. How far away from the one he designated?

A. There was one or two within three or four hundred yards.

Q. What kind of a hill was that?

A. It is a white hill covered with grass—a grass hill.

Q. What gave it the white color, the dead grass or the color of the grass itself?

A. The color of the grass.

Q. If the grass was just up, would it be a white hill?

A. It should be green.

Q. Did it differ from any of the other hills around there as to color?

A. No, sir; there was plenty more of the same kind.

Q. Now, coming down to the point on the map marked as chain of hills, that black triangular mark on the map, did you go to that point with Mr. Oury?

A. Yes, sir.

Q. And what did you find there?

A. Another old pile of stones.

Q. Any different from the others you have described?

A. No, sir; about the same.

Q. Did you see more than one pile of stones there?

A. In that neighborhood quite a number.

Q. About how many within, say, a few hundred yards around?

A. No, I think we only saw one close by. On the hills across the valley there was quite a lot.

Q. Now, taking the line on that map between what is called the initial monument and the northeast centre monument, is there a spring anywhere near that line?

A. No, sir; there is water right in the Sonoita, perhaps a mile.

Q. A mile off the line?

A. But running that line there is no water on that line; no, sir.

Q. But down in the river there is a place where the water came up?

A. Yes, sir.

90 Q. Would you call it a spring where the water comes up from the bottom of the Sonoita?

A. No, sir; I should not.

Q. What do you mean by a spring? Is it not water that comes up from under the hill?

A. Where it boils up from the ground or comes out of the hills.

Q. But where water comes out of the bottom of the valley it would be seepage from the river-bed?

A. Something or that kind; yes, sir.

Q. Leaving out what you find in the river-bed, is there any spring along the line between the initial monument and the northeast centre monument?

A. I don't know of any.

Q. You have been over the country, haven't you?

A. Yes, sir.

Q. For how many years have you been going backwards and forwards over that country?

A. Ten or twelve.

Q. And never heard of one along that line, outside of the river-bed?

A. No, sir.

Q. Going back, now, to the point on this map marked as the initial monument, the place described on this map as the abandoned place of Sonoita, what was there there in the way of ruins or buildings or anything else when you first saw that?

A. A couple of adobe houses—small houses with roofs on them.

Q. What kind of roofs?

A. Mud roofs.

Q. How supported?

A. Supported by poles.

Q. Of what kind of timber?

A. I think they are cottonwood.

Q. Is cottonwood a durable timber in this country?

A. It is, if it is kept dry.

Q. Compared with the harder woods, as mesquite, is it as durable?

A. No, sir; I think not.

Q. Now, the buildings that you saw there, were they ancient buildings, prior to 1821, or were they modern buildings?

91 A. Modern buildings.

Q. That you are certain about?

A. Yes, sir.

Q. Did you see any evidences of any ruins there?

A. Yes, sir.

Q. Covering about how much of an area?

A. Well, right there perhaps 4 or 5 acres.

Q. Describe the evidences of ruins that you saw there.

A. Well, just adobe walls and stone.

Q. Fallen down?

A. Yes, sir; and washed down—some stone walls there.

Q. Could you tell how old they were?

A. No, sir.

Q. Have they disappeared now?

A. No, sir; they are still there.

Q. They covered an area of some 4 or 5 acres?

A. You can find walls around there different places; yes, sir.

Q. How about finding pottery; is there pottery there?

A. Yes, sir.

Q. What kind of pottery?

A. Well, such pottery as the Indians make.

Q. This old olla pottery?

A. Yes, sir.

Q. Broken up ollas?

A. Yes, sir.

Q. Fragments of Indian pottery?

A. Yes, sir.

Q. Scattered all around there?

A. Yes, sir.

Q. Are there other similar ruins in the vicinity?

A. Quite a number.

Q. And pottery of the same character as at that place?

A. The same character; yes, sir.

Q. Now, you know that country pretty well. What are those evidence of?

A. Well, we supposed they were Indian villages.

Q. Old Indian villages?

A. Yes, sir.

Q. Not supposed to be the handiwork of white or civilized men?

A. No, sir.

92 Cross-examination.

By Mr. FORD:

Q. Going from the place called the abandoned place of Sonoita, about a mile northeast the Sonoita creek or river starts, does it not—about a mile?

A. At the present time I should say it was just about a mile.

Q. And beyond that there is no water running, is there, northeast?

A. Some years it raises half a mile further up.

Q. So a mile or a mile and a half northeast of the abandoned Sonoita the Sonoita creek rises?

A. Yes, sir.

Q. That always has running water clear to the end of this map, so far as you know?

A. Yes, sir.

Q. And that starts out of the ground in a spring, does it, there?

A. Right in the river-bed it seeps there—coming in forty places, I presume.

By Mr. REYNOLDS:

Q. Those seepages are not what we call in the east springs, are they?

A. No, sir.

Adjourned until tomorrow morning, at 9.30 o'clock.

WEDNESDAY, *March 23*, 1894—9.30 o'clock a. m.

Continuation of trial, pursuant to adjournment.

Appearances as before.

THOMAS HUGHES, a witness called and sworn on behalf of the United States, testified as follows:

Direct examination.

By Mr. BARNES:

93 Q. Where do you reside, Mr. Hughes?

A. Tucson.

Q. When did you first go down into what is called the Sonoita valley?

- A. I went there in the summer of 1868.
- Q. And how near there did you live after that?
- A. How near, do you say?
- Q. Yes, sir.
- A. I lived right in the Sonoita valley.
- Q. How long did you live down there?
- A. Up till 1883.
- Q. When you first went there did you know anything about a place called the abandoned place of Sonoita?
- A. Never heard of such a place.
- Q. How?
- A. No, sir.
- Q. Never heard of such a place, did you say?
- A. No, sir; never did.
- Q. When did you first hear that there is such a place?
- A. About 1880; some time along in the 80's.
- Q. How did that compare with the time this grant was first filed?
- A. Well, I heard it at the same time.
- Q. And up to that time you never had heard it?
- A. No, sir.
- Q. Was there anybody in that valley in possession of what they claimed to be the Sonoita or any other grant?
- A. No, sir.
- Q. Were there settlers in that valley?
- A. There were a few Americans—3 or 4.
- Q. Were any of them there claiming to be there under this grant—occupying under it?
- A. No, sir.
- Q. Do you know when that valley was surveyed—the public lands of the United States there?
- A. I can't remember the year. I was living there at the time.
- Q. As near as you can remember, about when was it?
- A. I think it was in 1878.
- Q. And people settled in there after that?
- 94 A. No more than was there before.
- Q. Did these people make entries under the public land laws?
- A. Yes, sir.
- Q. Do you know of portions of it going to patent?
- A. Yes, sir.
- Q. Now, in that whole Sonoita valley, was there anybody there asserting title under any grant—this one or any other grant?
- A. No, sir.
- Q. Mexican grant, I mean?
- A. No, sir.
- Q. And even up to this day is there anybody there asserting title?
- A. Not that I know. I haven't been there for some time.
- Q. About how long is it since you have been there?
- A. I have not been there but two or three times since I sold out in 1883.

Q. You have been assessor and collector of this county?

A. Yes, sir.

Q. And have lived here all the time?

A. Yes, sir.

Q. And know there has been no settlement under any grant?

A. Not that I know of.

Q. Do you know of any efforts of surveyors or public officers to find the abandoned place of Sonoita?

A. While I was living there a surveyor of Mr. Wasson's—Mr. Harris or White—came to my house and asked me if I had ever heard of such a place. He said he had been looking for it for two days at that time, and I told him I never heard of such a place.

Q. He didn't find any?

A. I don't know whether he found it afterwards or not.

Q. You may state if in that valley, along the hills around the valley, and in that country generally there are any places where there is pottery and ruins of old habitations and things of
95 that kind; and, if so, how many and how scattered over the country and where they can be found.

A. Well, below old Fort Crittenden, several places there—a great many places—where old Indian villages have been located.

Q. Over how large an area?

A. Every place I ever looked within half a mile of the valley on both sides.

Q. What evidences of ruins did you see at those places?

A. Oh, something like old corrals and little houses have been built and pottery there.

Q. Lines marked in adobe or stone?

A. Stones.

Q. Square or circular?

A. Some square and some round, and some places where quite a large family lived.

Q. And streets laid out evidently that these houses were built on?

A. I never noticed the streets particularly, but it was evident quite large families of Indians lived there.

Q. Did you see places where stones were set in the ground evidently as goals or as a race-track or for games to be played?

A. I never noticed anything of that kind. I noticed a great many places where they had been grinding corn, and the stones were broken up as if they had been attacked and cleaned out.

Q. Do you know a particular place where a man named Whightman settled and built?

A. Yes, sir; I know the man very well; I know the house he built very well.

Q. Right around there, were there any ruins when you first went there?

A. Not that I remember of; I know that he put a building up just before he was killed.

Q. Now, at the time you first went in there, what do you remember about there being ruins around where Wightman built that house?

96 A. I don't remember anything except in 1872, just after the mining law was passed, I went down in there and there appeared to be ruins of old furnaces or jackels in there, said to have been built by men who were running the furnaces in 1861, I think.

Q. They were not ancient?

A. No, sir; they were built by men who run the furnaces there.

Q. Have you been up and down that valley several times before that?

A. Yes, sir.

Q. If there had been ruins there would you have noticed them?

A. The road passed right close to them, and I would have noticed them. We found piles of stones—circles as large as this table (about 4 feet in diameter—Rep'r.) and a foot or 18 inches high.

Q. How about that, are they found over that valley generally?

A. They are found every place—every direction.

Q. How numerous are they?

A. Very numerous, I suppose. I have seen probably a hundred or more of them; every place on the high ridges.

Cross-examination.

By Mr. FORD:

Q. You know as a matter of fact, don't you, that the San José de Sonoita land grant has been assessed?

A. Not while I was in office. It might have been assessed since I was in office as treasurer.

Q. When were you in office?

A. I think it was 1884 and 1885.

Q. When were you assessor of the county?

A. I wasn't assessor at all.

Q. You do not know whether it was assessed, then?

A. No, sir; I do not.

97 CHARLES A. SHIBELL, a witness called and sworn on behalf of the United States, testified as follows:

Direct examination.

By Mr. BARNES:

Q. How long have you lived in Pima county?

A. Since the 20 of May, 1862.

Q. When did you first, if ever, go into the Sonoita valley?

A. First of June, 1865.

Q. And have you known that valley from then?

A. I have known it ever since.

Q. How long did you remain in the valley at that time or during the years after?

A. I lived there from the first of June, 1865, to about the first of August, 1868, when I was driven out of there by the Indians.

Q. Where in the valley did you locate?

A. In the lower end of the valley—the place called the Finley ranch.

Q. As we have a map here, I will get you to locate it. Where is that from the place where the Harshaw road leaves the valley?

A. Further down the valley towards Calabasas.

Q. About how far below that?

A. About 12 miles, I should judge.

Q. At the time you first went in there was there anybody living in that valley, claiming to occupy land under a grant?

A. Nobody whatever was in the valley when I went in there.

Q. Nobody at all? Do you know the place in the valley where a man named Wightman, who was killed in the Santa Ritas afterwards, located and built a house?

A. Yes, sir.

Q. You know that particular place?

A. Yes, sir.

By the COURT: Where is that place?

By Mr. BARNES: The place of the initial monument.

98 Q. Have you been at that place where the Wightman house was built?

A. Passed up and down the road quite often.

Q. In passing up and down the road could you look over the country—was it all plain, so you could look over it?

A. It is a valley; yes, sir.

Q. When you first went in there what ruins were there at or near that place?

A. On a hill there, there were some ruins.

Q. How far away from the particular house that Wightman built?

A. Oh, not a great distance.

Q. How far?

A. About half a mile up on the hill, I should judge.

Q. What did you see there?

A. An adobe house with two rooms and a sejuan (portal) between them and a roof over them.

Q. Modern or ancient?

A. Modern.

Q. Do you know any place called ancient ruins, with pottery—old Indian villages?

A. No, I don't know.

Q. What do you know about seeing piles of stones through the country, say, as large as this table and a foot or 18 inches high, whether they were frequent there or not?

A. There were several in there, but they are not very numerous, I shouldn't think. I never paid much attention to them, but just noticed them in passing around there.

Q. How are these piles of stones accounted for?

A. I think the Indians built them—old ancient ruins.

Q. In the Sonoita valley do you know of any other place except this where there were ruins or walls?

A. Yes, sir; beyond there, at the point going to Harshaw, there are old ruins, and there were ruins this side of that, down in the valley.

Q. Now, in going to the place where the road turns to Harshaw—I don't know whether you can tell by the map, but look at it and see (exhibiting map)—we will say this is the point where
99 the road goes up to Harshaw (indicating).

A. Yes.

Q. Out of the valley towards the south?

A. Yes, sir.

Q. At or near that point, describe the ruins that were there.

A. An adobe shanty on the right-hand side of the valley.

Q. Ancient or modern?

A. Modern.

Q. How about any ancient ruins there?

A. I never noticed any.

Q. You saw some ruins there over on a hill?

A. It was down the valley further—down below in the valley.

Q. These lines are supposed to represent section squares. You mean below the point where the Harshaw road leaves the valley?

A. Yes, sir.

Q. How many miles down?

A. The first ruins are about half a mile or a little more, maybe, and there are ruins at the place now known as the Sanford ranch.

Q. How far below that?

A. Four or five miles below, I should think.

Q. Now, if you will look at that map, we will say that the initial monument on that map is where the Wightman house was.

A. Yes, sir.

Q. With reference to the place where the Wightman house was and on that map the point called the initial monument, where were the first ruins that you spoke of? If the place called the initial monument is where Wightman's house is built and this place here is where the road goes to Harshaw, where with reference to this initial monument were the first ruins you speak of below?

A. Below the initial monument?

Q. Yes, sir; below the valley here about a mile, you said?

A. About a mile on the brow of a hill there.

Q. That was an adobe wall?

A. Yes, sir; an adobe house.

Q. That was modern, you say?

A. Modern; yes, sir.

100 Q. And coming on down the valley, where next?

A. At Sanford's ranch.

Q. Where would that be on this map?

A. It is where the valley turns west; 3 or 4 miles below that.

Q. Do you know where Magee settled?

A. No, sir; I don't know anything about where Magee settled.

Q. Well, Magee, we will say, was on 14 there (indicating); now, down below 14?

A. About 3 miles below there, there was another old adobe ruin;

that was modern. Below that was where I was, down towards the mouth of the cañon.

Q. As you examined these ruins could they have been there as ruins in 1821?

A. I should think not; not very well. Exposure of an adobe building that length of time would almost wash it away.

Q. Now, do you know the place where there was foundation stones and broken pottery and things of that kind?

A. Oh, broken stones and pottery around there, but we never paid any attention to that.

Q. What is your understanding that that sort of ruin indicated?

Objected to as immaterial, incompetent, and irrelevant.

Q. What has been always the understanding as to the origin of these particular ruins where this pottery is?

A. Indian ruins.

Q. All ascribed to that?

A. Yes, sir.

Q. Are they common throughout the country?

A. They are; yes, sir.

Q. Now, about these piles of stones that you speak of which you have frequently seen there. Describe the character of those piles of stones.

A. Stones falling over one another.

Q. In piles?

A. Some in piles and some scattered around.

101 Q. Were they on hills or in the valley, or both?

A. They were both.

Q. And found frequently there?

A. Yes, sir.

Q. And generally throughout the country were they found frequently?

A. Yes, sir; you could find them in other places.

Q. What were they attributed to?

A. To Indians.

Q. Always have been attributed to Indians?

A. Yes, sir.

Cross-examination.

By Mr. FORD:

Q. You are the county recorder of Pima county, aren't you?

A. Yes, sir.

Q. Please state if the Sonoita grant, "San José de Sonoita," is recorded in the records of your office, and, if so, state when it was recorded and in what book.

A. Yes, sir; it is recorded in the records of Pima county, in Book 3 of Old Records, at pages 1 to 11.

(By Mr. REYNOLDS:)

Q. What is the date?

A. Recorded the 13th of July, 1865, at 8 o'clock a. m.

By Mr. FORD (resuming):

Q. As to the appearance of this point termed "initial monument," you were testifying as to what you saw at the time you were there?

A. Yes, sir.

Q. You do not pretend to state what was there in 1821, I suppose?

A. I do not, for I was not there then.

Q. Have you ever been to the point designated in this map "high hill"?

A. Where is that?

Q. And will you say whether there is a monument there?

A. No, sir; I can't say. I never saw a monument.

Q. How as to the point called "cazadero"—have you been there?

102 A. Not that I know of. I have traveled up and down the valley, on the main road.

Q. How as to the point termed "S. E. monument," chain of hills, are you prepared to say whether at that point designated on this map there is a monument?

A. No, sir.

Q. And as to the other monument—the northeast monument?

A. I don't know anything about any of the monuments.

Q. You do not?

A. No, sir.

Q. These mountains to the northwest are the Santa Ritas, aren't they?

A. Yes, sir; the Santa Ritas.

Q. And the Sonoita creek runs the whole distance on this map, doesn't it?

A. It runs down the south and western sides of the mountain.

Q. Doesn't it run through the length of this map that you are looking at—the map made by George J. Roskrige—so far as you know?

A. Yes, sir; that is the way it runs.

Q. It rises between the point called "initial monument" and the point called "northeast centre"?

A. What, the water?

Q. Yes, sir; the water of the Sonoita river or creek.

A. Yes, sir; it rises down below old Fort Buchanan.

By Mr. BARNES:

Q. You do not mean there is running water from that place all down the Sonoita cañon? First, where was old Fort Buchanan?

A. By where Mr. Richardson's place is.

Q. How far above where the road now runs off to Harshaw?

A. I should think about ten miles.

Q. About ten miles above there?

A. Yes, sir.

By Mr. FORD (resuming):

Q. You do not mean there is water running from that place all down the Sonoita cañon (interrupted)——

103 A. From where the road turns off to Crittenden; it is below that where the water rises.

Q. So the water rises below the point designated on the map as "northeast centre" (interrupted)——

By Mr. BARNES:

Q. Does the water rise below the road to Harshaw here?

A. Yes, sir; down the valley further.

Q. Between that and the place called "initial monument"?

A. Yes, sir.

Q. Do you know the mountain called San Cayantano?

A. Yes, sir.

Q. What direction is that from where the Harshaw road leaves the valley?

A. Sort of northwest.

Q. About how far?

A. In a direct line?

Q. Standing and looking at the mountain, how far would it be away from you, in your judgment?

A. 15 miles.

Q. Towards the northwest, from where the Harshaw road leaves the valley?

A. Yes, sir.

Q. The mountain called San Cayatano is north of the Sonoita creek?

A. Yes, sir; north.

By Mr. REYNOLDS: I desire to offer in evidence a certificate made by the treasurer general of the State of Sonora as to the condition of the records, together with three copies of the translation thereof.

By Mr. FORD (after examining same): There is no objection whatever.

104 PETER R. BRADY, a witness called and sworn on behalf of the United States, testified as follows:

Direct examination.

By Mr. BARNES:

Q. Mr. Brady, do you know the Sonoita valley, in Pima county, Arizona?

A. I do.

Q. When did you first come down that valley?

A. In April, 1854.

Q. And what occasioned your being there at that time?

A. I was on a railroad survey.

Q. Did you go the whole length of that valley pretty much?

A. I did.

Q. At that time, in 1854, was there anybody living in that valley claiming to occupy it under a grant—San José de Sonoita or any other grant?

A. There was not.

Q. Nobody there then?

A. No, sir.

Q. What time in the year did you come down there?

A. In April, 1854.

(Cross-examination declined.)

Government rests.

GEORGE J. ROSKRUGE recalled by claimants in rebuttal.

Direct examination.

By Mr. FORD:

Q. You prepared a county map of Pima county, Arizona, did you?

A. Yes, sir.

Q. From what data was that prepared?

A. From data that I collected in surveys made by myself.

Q. During what length of time and obtained how?

105 A. Well, obtained over a period of probably 18 years, and by going all over the county and keeping the data that I got—triangulating and measuring.

Q. Is the paper which you have, marked "Official Map of Pima County," a copy of the map made by you?

A. Yes, sir; it is an exact copy of the map made by me as the official map of Pima county, approved by the board of supervisors of Pima county and adopted as such map.

Q. Does that map correctly represent the Santa Rita mountains?

A. It does, sir.

Q. And the Sonoita creek?

A. It does, sir.

Q. I will ask you in what direction the point on the map "offered in evidence as the map of the San José de Sonoita private land claim"—the point taken as the old Sonoita is from the place called Tubac.

A. It is about southeast from Tubac. There (indicating) is Tubac, and there is due east; there is the old Sonoita, right there (indicating), and here is the road that goes right over to Tubac.

Q. Are these hills designated on the map as the cuates the same hills on the map offered in evidence as the twin hills, being one of the boundaries of the San José de Sonoita grant?

A. Yes, sir; they are.

Q. Where does the Calabasas and Tumacacori land claim lie with reference to the western end of the San José de Sonoita grant?

A. Well, they conflict.

Q. They do?

A. The northeast corner of the Calabasas conflicts with the western portion of the Sonoita grant, not as shown on this map, under-

stand. These grants as surveyed here and shown here are as surveyed by the Government, and there is no conflict shown there, but there (indicating) is where it comes down; there is that corner (indicating).

Cross-examination.

By Mr. REYNOLDS:

Q. Is that survey of this grant on that map your survey?

A. These surveys here (referring to map)?

Q. Is this survey of this private land claim your survey or the Wasson survey, as located on that map?

A. The Government survey.

Q. What do you call the Government survey?

A. As surveyed by the United States.

Q. Under Mr. Wasson?

A. Yes, sir.

Q. It does not correspond with yours?

A. No, sir.

Q. You haven't it correctly laid down on that map?

A. Not mine.

Q. You made the county map approved by the commissioners of this county as a correct map of this county?

A. Yes, sir.

Q. And you say that survey of this grant is not correct. That is not your survey?

A. No, sir.

Q. That is the "Wasson survey"?

A. Yes, sir.

Q. And that does not correspond with your survey?

A. I put all the Government surveys in of the land grants.

Q. That is not correct, then?

A. It is correct as far as the Government survey is concerned.

Q. I understand; but as a matter of fact it is not correct?

A. Well, the map is correct.

Q. You say the map is correct?

A. It is correct, but it does not show my survey.

Q. Then the survey of the Sonoita private land claim as laid down on that map, according to your opinion, is not correct—not a correct location of it?

A. You are correct; I don't think it is.

107 Q. Do you know where the San Cayatano mountains are?

A. Yes, sir.

Q. Do you know where the Cerro San Cayatano is?

A. Well, you ask me if I know where the mountains are, and I say yes.

Q. Where are they with reference to the Sonoita creek and the cardinal points?

A. They are right north of the Sonoita creek.

Q. They are?

A. Yes, sir; the points come right down to the Sonoita. The point of the San Cayatano mountain comes right down there.

Q. Do you know where the Sierra San Cayatano is?

A. Yes, sir.

Q. Is that in the San Cayatano mountains?

A. No, sir; it is south of the Sonoita.

Q. What direction from the mountains?

A. It is pretty nearly due east of the south point.

Q. What you designate on the map as Shibell's peak, is it any part of the San Cayatano mountains?

A. Yes, sir.

Q. How far is the Sierra San Cayatano from the San Cayatano mountains?

A. 6 or 7 miles.

Q. Is not Shibell's peak what you call the Sierra San Cayatano now?

A. Yes, sir; it is the southernmost peak of the San Cayatano mountains.

Q. Is that what you designate as "cerro"?

A. No, sir; cerro is a hill and sierra is a mountain. They are two different things altogether. One is a range of mountains and the other is a hill.

Q. How far is that from the mountains?

A. As I say, about 7 miles.

Q. You say your survey was correct. Did you ever figure to determine whether the lines would close or not?

A. No, sir.

108 Q. You closed it anyhow?

A. As shown on that map.

Q. In other words, you closed it by scale?

A. I closed it by scale; that is all.

Q. You never made a computation to show whether your distances would close it?

A. No, sir; if I was going to make a plat that could not be correct, why then it would be closed exactly; but we have map-right in our office now that have been sent back from Washington from the fact that they close too good, and therefore they would not receive them.

Q. But you closed it all the same?

A. It — the scale; it is closed; yes, sir.

Q. You do not show on your map the fact that it would not close?

A. No, sir; I understand Flipper testified there was 17 chains difference. If you take the Government allowance for surveys of that distance, you will find there is only 33 or 34 feet, and if you close within that distance in that kind of a country, you are doing pretty good surveying; therefore I call that pretty good work.

Q. But if you triangulate and don't chain, can't you get at your distances if you get your angles right; aren't you able to get them to an inch?

A. No, sir; you can't do it.

Q. If you triangulate and lay your base line properly and not measure at all, can't you get the actual math-matical distance?

A. No, sir; you can't. The Coast Survey go over their surveys a dozen times before they are correct.

Q. Don't the Coast Survey by triangulation locate breakers and rocks on the coast within three or four feet?

A. Yes, sir.

Q. By triangulation?

109 A. Yes, sir; but they go over it and measure with chains and triangulate and measure with rods and every other way.

Q. How do they chain or measure by chains or tape-lines or by any other physical means the distance to a rock or a shoal 8 to 10 miles from the coast on the Atlantic seaboard?

A. That I couldn't tell because I never have been there.

Q. No; I guess not. Don't they do it by triangulation only?

A. Why, most decidedly; but they take months and months to make their base lines.

Q. You didn't lay any base line?

A. Yes, sir; I got a base line for every one in the public surveys.

Q. But you say the public surveys are not correct?

A. Not absolutely; no sir.

Q. Then your base line is not correct?

A. No, sir; not absolutely correct. There is no public survey of the United — that is correct.

Q. How did you calculate the area of this land grant without (interrupted)——

A. I did not calculate any area at all.

Q. You did not?

A. No, sir; I did not.

By Mr. FORD:

Q. How does the point taken in the Wasson survey as the abandoned Sonoita compare with the point taken in your survey, if you know?

A. It is the same place.

Q. And the Wasson survey differs from your survey in what respect as to the starting point—the central point? It does not differ as to the central point, does it?

A. No, sir; it is merely a difference in going up the river and down the river; that's all.

Q. The Wasson survey takes as the central point the same one?

A. Yes, sir.

110 By Mr. REYNOLDS:

Q. You took the same point as the Wasson survey?

A. No, sir; I knew where the point was.

Q. You knew where the point was before you went there?

A. Yes, sir; I saw the post taken by John L. Harris years ago.

Q. And you used Mr. Harris's judgment as to that point?

A. I didn't use the judgment of Mr. Harris; I used my own.

Q. But your judgment happened to correspond with his as to the starting point?

A. He was at the same hacienda ; so was I.

Q. I say, your judgment corresponded with his as to that starting point, didn't it?

A. So far as the starting point was concerned, yes, sir ; my judgment corresponded with his.

By Mr. REYNOLDS : That is all.

By Mr. FORD : Mr. Cameron has not come in and I am not sure that we shall need his testimony, but I should like to reserve the privilege of putting it in. It will be merely as to the location of these mountains, and I think he will be here tonight.

By Mr. REYNOLDS : I have no objection to that. We can proceed with the argument now, and if he comes in before the case is submitted we shall raise no objection to his testifying upon that subject.

By Mr. FORD : Very well ; thank you. We now offer in evidence, as per stipulation with counsel for the Government, the testimony of F. W. Oury, deceased, given by him in the trial of a case in the district court of the first judicial district of the Territory of Arizona in and for the county of Pima, wherein Santiago Ainsa, administrator, with the will annexed, of the estate of Frank Ely, deceased, was plaintiff and The New Mexico & Arizona R. R., a corporation, 111 *et al.* were defendants, it being agreed that said testimony may be read with the same force and effect as though said F. W. Oury, who is now deceased, were present at the trial of this cause and testifying. Said testimony is embraced in the transcript of shorthand notes of testimony given in the cause last above referred to, the direct examination beginning on page 115 of said transcript and the cross-examination on page 123 of same.

By Mr. BARNES : And we offer with it the redirect examination, on page 232 and following and on page 378 and following. The understanding is that all of the testimony of Mr. Oury given in that case, so far as applicable to this case, is in, and if I have omitted any pages I will call attention of the court to it.

By Mr. FORD : And it is stipulated that said testimony of Oury's may be incorporated in the record in this case as copied from the said transcript of shorthand notes in the case in which said testimony was so taken.

The testimony referred to above is as follows :

(P. 115.)

FRANK W. OURY, a witness called and sworn on behalf of the aforesaid plaintiff, testified as follows :

Direct examination.

By Mr. FORD :

Q. State whether you have ever seen a paper purporting to be

the original title paper of a grant called the San José de Sonoita grant.

A. I have.

Q. Where did you see it?

A. I had it with me recently.

Q. I am speaking of the original in Spanish.

112 A. Oh, at the surveyor general's office, in Tucson, Arizona.

Q. What examination, if any, did you make of it there?

A. I read it over, especially the part describing the San José de Sonoita claim.

Q. (Exhibiting typewritten book.) Did you ever have the paper which I now show you, headed "Translation," etc.?

A. Yes, sir; that is the paper that I saw. This purports to be a translation of the paper that I examined at the surveyor general's office.

Q. I mean that particular paper. Did you have that?

A. Yes, sir; also.

Q. With regard to the alleged grant there, state what you did and what you found, if anything, regarding monuments.

Objected to as to that part of the question which says "With regard to that paper." If he did anything on the ground, counsel is perfectly willing to have it go in, but we do not want his construction of that document. That is a judicial question for the court and not for a surveyor.

By the COURT: State what you did.

Q. Please state fully, Mr. Oury, making a detailed statement of what you did and what you found without any further questions.

A. I went from this place to the vicinity of the town of Crittenden, in this county, for the purpose of determining the location of certain monuments of a certain alleged land grant called the San José de Sonoita. I had in my hands a translation of the paper to which I recently referred as having seen at the surveyor general's office, giving a description of all the monuments of that claim.

113 I started from the town of Crittenden down what is known as the Sonoita valley to its mouth (interrupted)——

Q. Excuse me. Please first state your occupation, Mr. Oury.

A. My occupation in this particular instance was that of surveyor.

Q. What knowledge, if any, have you of surveying?

By Mr. BARNES: We do not question his skill as an engineer.

By Mr. FORD: But I want it.

A. I have studied surveying and have received a diploma as a bachelor of science from the University of California.

Q. And are you a practical surveyor?

A. Yes, sir.

Q. What experience have you had in making surveys?

A. I have surveyed a number of things. I don't know as I can ; enumerate them all.

Q. For how many years?

A. For the last five years; since my return from the university.

Q. Now, you may go on.

A. I went down what is known as the Sonoita valley to its mouth at Calabasas, and at a point three-quarters of a mile southwesterly of what is called the Bill Morgan house, now claimed by Mr. Richardson, as I am generally informed—in fact, I know that—I found the remains of an old house and of old houses—the ruins of an old house, old houses—located westerly from a high red mountain. This high red mountain is the only one in the entire neighborhood. These ruins that I have spoken of are the only ones or rather the most extensive ones and the ones which bear the most evidences of age that I could find in traveling that distance, and they are generally known as the ruins of San José de Sonoita. I

take that as the starting point of my examination. From
114 here I traveled up the Sonoita valley, and at a distance of about one mile up this valley I found a spring—a large spring; it is the headwaters of the Sonoita creek—that is to say, further up this cañon the Sonoita creek does not flow. I traveled still further up the valley, and about three-quarters of a mile up from this spring I found that a cañon, or rather a little valley, empties into the Sonoita creek from an easterly direction. From the old ruins of Sonoita to this last place that I refer to there is no other valley that empties from an easterly direction. I could find no monument here whatever, nor trace of one; but as I could not find any other valley that emptied from the east—in fact, I will state that even further up to the head of the Sonoita valley there is no other valley that empties from an easterly direction. For this reason I take this to be the point referred to in the translation of the expediente which I had in my hand and in the original expediente which I had examined as being the northeasterly corner of that claim. From this point I go up the little valley, which empties into the Sonoita from an easterly direction, which I last referred to, to a ridge of hills, on whose slope there are a few oak trees, and on top of this ridge of hills I found the remains of an old monument of loose rock, evidently a very old one. Now, as this is the first ridge of hills which one would meet in traveling from this last point, which I said I accepted it as the northeast centre monument of the claim, and as the description corresponds exactly (interrupted)—

By Mr. BARNES: I object to that part of it. State what you saw.

By the COURT: Yes, describe it, rather than state your
115 conclusions.

By the WITNESS: I simply saw the only chain of hills which one would meet in traveling from the—shall I say the point I accepted as the northeast point?

By Mr. BARNES: Yes; I have no objection to that.

By the WITNESS (continuing): From the point marked on this map as the "house," and the only one which has a few oak trees on its side, and on top of this I saw this monument of stones—loose rock—and the only one I could find in that entire vicinity. I then

returned to the point marked on this map as the house, and traveled northwesterly across the Sonoita creek to the top of a white hill—not the very summit, but the top of it—where I found a good-sized monument of loose rock, perhaps 4 to 5 feet in diameter by two feet high. This last high white hill is covered with grass—rather, grass roots; not very much grass there—and is the only one, or, rather, the first one, that you would meet in going up the Sonoita valley from the old abandoned ruins of Sonoita. Then I returned to the abandoned place of Sonoita, or, rather, the place that I have called that, and from there I asked my guide to take me along the old trail leading to Solero and Tubac. I had never been over there myself, and he led me across a trail, and at about one mile directly on the trail I found a loose monument of, or, rather, a monument of loose rocks located between two reefs of rock, which, according to my understanding of the meaning of the word “cazadero,” would very properly suit the place, and I furthermore found along that trail no other place that could properly be called a “cazadero,” as I understand the word.

By Mr. LOVELL:

Q. What does that word mean?

116 A. A place where a person could lie in wait to shoot either a deer or an enemy, being at the same time himself free from danger or risk from being shot in return by the enemy or being seen by the deer which he is hunting.

By Mr. BARNES:

Q. A good place for an ambush?

A. Yes, sir; that would describe it; an ambush place. From here I returned again to the abandoned place of Sonoita and traveled down the Sonoita cañon to a point—do you want me to give the exact location of that point with reference to public surveys or shall I merely state—

By Mr. FORD (resuming):

Q. Answer it as you see fit.

A. I traveled down the Sonoita cañon to a point marked on this map as the ledge and here again I found the remains of a monument of loose rock which bears evidence of old age, because there is one of these yucca plants—palmeas, as we call them in Spanish—in it, and it is evidently an old monument. To the west of this monument is a rocky ridge which ends in a slide of large boulders, and I will further state that in traveling down this cañon this is the only ridge which adjoins the cañon and which ends in a slide of large rocks. From here I proceeded westerly across this ridge and at the top of a hill which, owing to this location being directly in front of the course of the waters, has evidently formed an eddy in the waters and that has formed a little valley in the same cañon, and on top of this hill I found a very large monument of loose rock in a very fair state of preservation. I will also state that this is the only hill which forms a little valley just in that

cañon, owing to the fact that the waters struck it right di-
117 rectly in their course, forming a little eddy, and that forms
a little valley. From here I returned to the monument,
which, I say, was located at the place marked the ledge on this
map, and then go southeasterly to the first of two hills almost
exactly alike, but sometimes the length of one is set against the
point of the other, or sometimes when you view them from one di-
rection one appears to be a long hill and the other a narrow short
one, and if you view them from a certain direction, as from the
ledge or from that little hill, they look precisely alike. At the top
of this hill I did not find a monument, but they are the only two
hills in the entire locality which stand prominently above all the
rest, and which are alike to each other and at the same time entirely
different from any of the surrounding hills—that is to say, you can
select many hills that were like one to the other, but at the same
time like the third one adjoining, but I mean these were the only
two hills like to each other and entirely different from anything
surrounding them. Then I returned to the abandoned place of
Sonoita again, and, looking in a southeasterly direction towards the
high red mountain which I have already described, I saw a high
hill, or rather it is the top of a ridge which starts from the very point
which I have called the abandoned place of Sonoita, and which hill
is covered with many oaks, distinct on this account from the other
hills in the neighborhood. I traveled up this ridge, and nearly at
its apex I found the remains of an old monument of loose rock.
The monument was not in a good state of preservation, as the rocks
were scattered badly, and right at the centre of them somebody had
dug a hole evidently quite recently from the appearance of
118 the earth that came out of it. I will further state that all
these points which I have described are the same points
which I find on this map as marking the corners of the San José de
Sonoita claim; that is all.

By Mr. FRANKLIN: That is all.

Cross-examination.

By Mr. BARNES:

Q. Please look at the map to make it more intelligible. Who
was your guide in going from the abandoned place of Sonoita
marked on the map?

A. I was my guide myself.

Q. You said your guide led you.

A. Oh, in going from?

Q. Yes, sir.

A. There were two vacqueros that I think are working for Mr.
Colin Cameron.

Q. What were their names?

A. That I could not tell you. I didn't ask them.

Q. Where did you meet them on that day?

A. I did not meet them on that day. I met them by arrange-
ment on the Sonoita creek on Sunday afternoon.

Q. You made arrangement to meet them and they went with you?

A. It was arranged with me that they should have some horses for me to make the examination I went over.

Q. And guided by them or by one of them you went along the trail across the creek and railroad?

A. Yes, sir.

Q. And went through the narrow canyon towards the mesa above?

A. Yes, sir.

Q. And as you went from the valley into the escarpment through the canyon the canyon narrows down to a narrow place?

A. That is not a canyon.

Q. A side canyon or wash?

A. No, sir.

Q. Describe it.

119 A. It is simply a pass—a rise in the trail—this little hill.

Q. Made by nature?

A. Yes, sir; it is merely a pass in the trail.

Q. It is an easier way to pass up the escarpment on the mesa than to go up the more abrupt places?

A. There is a very distinct trail that goes right along there, which I say the guide took me. I simply asked him to take me to the trail from the San José de Sonoita to Tubac.

Q. Is there not a mesa there?

A. Above that, yes, sir.

Q. In going from the valley up to that mesa you would pass along by this place on the trail, and doesn't the trail go on to the mesa?

A. It goes on and joins what is now the wagon road from the Trask mill to Salero.

Q. It does not remain in the valley, but goes up?

A. Yes, sir; goes up.

Q. It leaves the valley at the cazadero?

A. It leaves the valley after crossing the railroad from the old Sonoita ruin.

Q. Is not the point you call the cazadero (interrupted)——

A. I don't know whether that is the cazadero or not (referring to map).

Q. But the point you call on the map the cazadero, is not that point about the point where you leave the valley to go on up to the mesa on that trail?

A. It is not mesa according to my understanding, because it is a series of rough hills.

Q. Well, is not that the point where you leave the valley to go up on the hills?

A. Oh, no; you have left the valley long before you come to that.

Q. Before you come to the cazadero?

A. Yes, sir. I stated it was a mile from the old Sonoita ruins, and they are adjoining the banks of the creek.

Q. These ridges make a narrow place to go thorough?

120 A. They are not ledges.

Q. Well, they make a narrow passageway?

A. Yes, sir.

Q. How far across?

A. From rock to rock?

Q. Yes, sir.

A. The rocks are above the trail.

Q. Yes, sir.

A. The trail is not over twenty feet wide, whereas the tops of the rocks are probably 100 yards.

Q. Kind of a V shape?

A. Only where the trail passes there is no rock. It is a smooth place and the rocks stand vertically—right up straight.

Q. And right in between the rocks in the narrow passageway is the pile of stones?

A. Yes, sir.

Q. You pass how close to it?

A. Right on one side of it.

Q. And could drop your hat on it as you ride along?

A. Yes, sir.

Q. As you went to Tubac, was this to the right or the left as you passed?

A. I suppose you could pass it on either side. As I have stated, it is loose ground right there, and I suppose some people pass one way and some the other way; I do not recollect which is the more defined trail.

Q. It was a pile of loose rock; no evidence of mortar or adobe or cement that ever held them together?

A. No, sir.

Q. Now, in any of the monuments you speak of was there any mortar or any evidence of adobe or cement to hold them together?

A. No, sir; not that I could see.

Q. Apparently loose rock piled together?

A. I couldn't see any mortar or cement. They appeared to me that they were merely piles of loose rock.

Q. Did you see any other monuments around there?

A. Yes, sir; I did.

Q. Were there not lots of monuments all over that country?

121 A. Yes, sir; plenty of monuments. Do you mean in the vicinity of the cazadero?

Q. Take the upper end of the valley, all in the neighborhood of that house and in the neighborhood of the abandoned Sonoita; are not the hills around there covered with monuments?

A. There were little monuments that one could see were recently built.

Q. There were lots of them there?

A. I don't remember how many, but I remember one; that's all.

Q. Didn't you see several there?

A. I don't remember just how many, but, as I say, you can tell at once they are recent.

Q. You thought they were recent monuments?

A. Yes, sir.

Q. You do not know when those monuments you examined were put there?

A. I am referring to the looks of them merely.

Q. So I understand you.

A. That is all.

* * * * *

(Recalled.)

By Mr. BARNES:

Q. Since the witnesses were here in May or June, whenever it was, have you been down to the location of this grant shown by the red lines here on the map?

A. Yes, sir.

Q. Did you show the monuments as surveyed and that you testified to before to anybody?

A. Yes, sir.

Q. Who did you point them out to?

A. Mr. R. R. Richardson.

Q. Is that map made correctly to scale?

A. Yes, sir.

Q. This is the Roskrige map?

A. Yes, sir; it is an inch to the mile.

Q. The expediente and your measurements were made in varas and cords?

A. Yes, sir.

Q. In making this is varas and cords changed into inches
122 and correctly scaled on this map?

A. Oh, no; I did not mean that in my answer before. I mean it is drawn to a scale; 80 chains equal a mile.

Q. Now, taking the initial monument as it appears here to the monument called the east centre monument, what is the distance as the map shows it?

A. 1 mile and 45 chains, as this map shows it.

Q. How many varas and cords is that?

A. Will you permit me to refer to my book?

Q. Yes, sir; refer to anything you have got.

A. (Referring.) One mile is equal to 38.41 cords, so a mile and 45 chains (interrupted after pause)——

Q. I don't mean in inches.

A. About 57 cords; 57 cordels.

Q. That is the distance, then, from that initial to the east centre monument?

A. Yes, sir.

Q. A cord is how many varas?

A. Fifty.

Q. And how many varas and cords from the initial monument to the west centre monument?

A. About forty cords.

Q. Of fifty varas each?

A. Yes, sir.

Q. And so on through all this map the ratio of cords is changed to chains and would be true to scale according to that basis—the basis of those two distances I have mentioned particularly?

A. I do not understand that question.

Q. The point I would get at is, if we discard the unit of chains and take varas, is your map still true to scale?

A. It would be; certainly.

Q. What is the length of a vara in inches and feet?

A. One vara is equal to 33 inches or two feet 9 inches.

Q. And a cord is how many of those varas?

A. 50 varas.

123 Cross-examination.

By Mr. FRANKLIN:

Q. Did you show Mr. Richardson, at the time you have testified that you went out there with him, any monument at the point marked on the map as the cazadero as being on the trail from Tubac?

A. Yes, sir.

Q. Describe exactly how that monument was at the time you showed it to him as near as you can.

A. Well, it is a large monument of loose stones. It is weather-beaten and looks to be an old monument. Of course, I don't know how old it is, but it is right on the trail—on the narrow defile which you are now styling here as the cazadero. It is between two bluffs of rock. It is very narrow, and the trail passes right on the lower portion of the defile and the monument is exactly on the trail.

Q. Do you mean by that that the trail goes over the monument?

A. No; it goes right around the monument.

Q. About how high is the monument?

A. Oh, I should think about a couple of feet high.

Q. And about what is its diameter?

A. Oh, I should think about six feet. It is a big monument.

Q. You say that it bore evidences of age. What evidence did it give of age?

A. The rocks were weather-beaten; that is about all; and the grass grown right inside of the monument. I don't know as I can describe it more accurately. The stuff that had accumulated inside the monument had grass in it—not over the whole monument, but over the lower portion, you know.

* * * * *

(Recalled.)

124 By Mr. BARNES:

Q. Mr. Oury, calling your mind to the point on the map you hold in your hand, "initial monument," how far is it from that point to "E. cen. mon."?

A. Two miles 73 chains.

Q. How many varas and cords?

A. About 104 cords, more or less.

Q. Cordels?

A. Yes, sir; more or less.

Q. Now, suppose you started from the initial monument north-easterly, how far from the initial monument to the N. E. cen. mon. near where the word "house" is marked on that map?

A. 2 miles 73 chains.

Q. How many cords?

A. Approximately 104 cordels of fifty varas each. I can give it you exactly if you want it.

Q. Well, that is approximately correct?

A. Yes, sir (computing); 112 cords.

Q. If you start from the initial monument and measure off 63 cords, do you know what you would find at that point on the ground there—do you remember?

A. No, sir; I did not measure that.

Q. Did you measure a line from the initial monument 63 cords in any direction?

A. No, sir.

Q. Commencing at the initial monument again, how far is it from the initial monument to the W. cent. mon. in cords?

A. About 40 cordeles, 82 chains.

Q. Measuring from the initial monument 25 cords, can you tell what is on the ground at that point?

A. No, sir.

Q. You didn't measure it at all?

A. No, sir.

Q. Didn't stop at 25 cords?

A. No, sir.

Q. Measuring from initial monument towards the east centre monument 25 cords there from the initial monument, did you see anything on the ground; and, if so, what was it?

125 A. Didn't stop there at all.

Q. How far is it from N. E. cent. mon., near where the word "house" is on the map, to the N. E. mon.?

A. It is about 57 chains— $\frac{2}{3}$ ths of a mile, about.

Q. How many cords?

A. About 28 cords, or 29.

Q. Now, from the N. E. cent. mon. to the monument near the chain of hills, S. E. mon., in red ink, how far is that?

A. About 32 cords, 67 chains.

Q. You did not measure, then, as I understand you, 25 cords from the initial monument in any direction?

A. No, sir; I did not.

Q. Starting from the initial monument, extending towards the south along down the canyon, did you measure a distance of 312 cords, or approximately to that?

A. I did not, sir.

Q. Do you know what you would find on the ground at the end

of 312 cords in that direction—in the direction I have mentioned—from the "initial mon."?

A. I do, sir.

Q. Do you see the word "cazadero" there?

A. Yes, sir.

Q. Taking the distance between the two red lines right south on the map from the word "cazadero"—the distance between those parallel lines—

A. The perpendicular distance?

Q. No, sir; the shortest distance between those two red lines, in cords.

A. Of course, that is perpendicular between them.

Q. No; not north and south, but a line drawn at right angles, right across them, how far would that be in cords?

A. I did not figure it out, but I can tell you approximately (computing); about a mile and a quarter.

Q. How far?

A. About 50 cordels—mile and a quarter.

Q. Did you go from the initial monument to a point 312 cords, or near that or about that? Did you measure that distance from the initial monument extending towards the south along 126 down the canyon and at that place stop, and did you find a heap of stones there?

A. No, sir.

Q. Did you measure that line at all?

A. No, sir; not in that way.

Q. Did you hunt for a monument at that point, 312 cords from "initial mon." down the valley?

A. Yes, sir; because I hunted all over the whole valley.

Q. And did not find it?

A. I did not make a point to measure 312 cords and hunt for a monument. I started from the initial monument and looked at every point down the valley up to the point marked "ledge" on the map and "S. W. cent. mon."

Q. Did you measure a line beginning at the initial monument down the valley southerly 287 cords to a point?

A. No, sir; I did not.

Q. Did not measure any such line as that?

A. No, sir.

* * * * *

(Recalled.)

By Mr. FORD:

Q. Mr. Oury, turning to the Roskrige map, how far is there running water northeast of the point designated as the southwest centre monument?

A. Yes, sir.

Q. I say how far.

A. About a mile or a mile and a quarter northeast (interrupted)—

Q. You did not catch the question. From the point designated as the southwest center monument how far northeast?

Q. Oh, it is several miles there, but it is between a mile and a mile and a quarter from the point marked "initial monument" up the river.

Q. How far from the southwest centre monument—the extreme lower end of the grant—how far with reference to this map; not in miles?

A. How do you mean?

Q. Well, does it extend to or beyond the northeast centre monument?

A. It extends to within about a mile from the northeast centre monument and starts at just about the point marked ledge there, or ends there, rather.

Q. And where does it start?

A. I say about a mile and a quarter northeast of the place marked here "abandoned place of Sonoita."

Q. And where with reference to the place marked northeast centre monument?

A. Between three-quarters of a mile and a mile southwest from there.

Q. What is the fact as to running water from the point where you have stated the running water starts northeast?

A. There is no water beyond that place.

Q. For how far?

A. For a space of about, I should think, 5 or 6 miles till you get beyond Crittenden, where the Monkey Spring water comes in.

Q. Did you hear Mr. Flipper's testimony as to the absence of a high hill northwest from the northwest centre monument?

A. Yes, sir.

Q. What have you to say in that respect?

Objected to as repetition.

By the COURT: I remember distinctly that that was gone into.

Q. Do you recollect whether you took Mr. R. R. Richardson to the hill designated on this map as high white hill?

A. Yes, sir; I did.

Q. I will ask you, though you may have stated, but I do not distinctly remember, what is the appearance, with reference to other objects, of the hills designated as twin hills, the southwest monument in this map.

Objected to as repetition.

By the COURT: I think he went into that very fully; didn't you, Mr. Oury?

A. I think so; yes, sir.

By Mr. FORD (resuming):

Q. Are there or are there not, so far as you know, at or near the point designated as the southeast monument, at the chain of hills,

any two hills, one like the other, like or similar to the two hills designated as twin hills?

A. No, sir; there are not.

Q. Did you hear Mr. Flipper's testimony that there were fourteen piles of stones in a radius of two hundred yards of the place marked on this map as "high hill, E. cent. mon."?

A. Yes, sir.

Q. State what is true as to your recollection of piles of stones being within that distance.

A. Well, I don't think there are more than—well, not near so many as that within 200 yards of this monument; but if you go down about half a mile along the ridge, about midway between "high hill" and the initial monument, there you can find any number of those monuments, but not within two hundred yards of the high hill.

Q. Will you please state, if you have not done so, the topography of the country at that point designated as high hill?

Objected to as repetition.

By the COURT: I do not remember as to that. You may state.

A. Starting at the point marked "abandoned place of Sonoita," there is a ridge which runs easterly, gradually ascending till you get just a little beyond where the point marked "high hill" 129 on this map is, and then it breaks off suddenly—quite suddenly—but the ridge still continues on to the high mountain beyond here. I can sketch it off so you will understand it better, I guess (sketching). This is a profile of it. It starts at the abandoned place of Sonoita and gradually goes up until you get to the high hill, and then it breaks off suddenly, and then there is a high red mountain beyond here.

Q. Please say whether between the point marked "initial monument" and the point marked "N. E. cent. mon." there is a spring; and, if so, where it is and what is it, with reference to size.

By Mr. BARNES: I think he was examined about that.

By the COURT: I do not recollect that he was asked as to that.

A. There is a spring there at the place where I have described as being the beginning of the water; that is about midway between "abandoned place of Sonoita" and the place marked "house." It is where the Sonoita stream starts to run. North of that there is no water, and from that there is a stream which is the source of the Sonoita river—a spring.

Q. Did you or did you not testify that at the point marked northeast centre monument there is extending towards the east a valley?

A. That is what I testified to; yes, sir. There is a valley there.

Q. Did you testify whether there is such a valley, starting from the initial monument, before you came to that valley?

A. There is no such valley. I testified to that, too.

Q. How far are the hills marked "twin hills" from the Calabasas grant or hacienda, if you know?

A. I should say three or four miles; I mean from what is usually known as the old Calabasas ruins—the ranch-house.

130 Q. How far are they, if you know, from the lands of the pueblo of Tumacacori?

A. Well, you might say they join there; in fact, they conflict there a little bit—that is, the southwest centre monument and what is generally known or claimed as the Tumacacori grant. I don't know what he means by the pueblo of Tumacacori; I suppose he means the lands.

Q. I do mean the lands.

By the COURT:

Q. Do you know where the pueblo of Tumacacori is?

A. I know where the mission is, and I suppose that was the pueblo, too. That must be about 10 or 12 miles from this.

By Mr. FORD:

Q. How far is it from the nearest point of the Tumacacori grant, if you know where that is?

A. About a mile and a half westerly—that is, the nearest point of the Tumacacori grant is about a mile and a half westerly from the twin hills.

Q. Did you hear Mr. Flipper's testimony as to the appearance of the monument designated on this map as the southwest centre monument as to being recent?

A. Yes, sir.

Q. I would like for you to state again the condition of that monument.

Objected to as repetition.

By the COURT:

Q. Did you state as to that?

A. I described the monument, I think, but I don't know whether I described it fully or not. I will state that it looks old, and one reason is that makes me believe the monument is an old one is there are two yucca plants about three feet high right in the monument which have evidently grown subsequent to the building of the monument.

131 Q. Have you had occasion to make surveys of this and other private land claims in this and other counties?

A. Yes, sir.

Q. State how the monuments in such land claims compare with the monuments testified to by you as to appearance as shown on this map.

A. They have the same appearance of age and the same general appearance; look no more recent than any others that I have seen.

Q. Were you present when certain photographs were taken of the monuments designated by you on this map?

A. Yes, sir.

Q. (Presenting photograph.) Were you present when this photograph was made?

A. Yes, sir.

Q. State what it is.

A. That is a photograph of what is known here as the "twin hills" or "cuates."

Q. And are they the twin hills designated as "twin hills" at the southwest monument of this map?

A. Yes, sir.

Q. (Presenting another photograph.) Were you present when this photograph was made? And, if so, state what it represents.

A. Yes, sir; I was. That represents the twin hills also, as seen from the southwest centre monument.

Q. The same twin hills designated on this map as the southwest monument?

A. Yes, sir.

By Mr. BARNES:

Q. You stand where for that photograph?

A. Over here. Well, it is hard to say just where it is looking from, but they are the twin buttes; they are usually recognized.

By Mr. FORD: I offer each of these photographs in evidence.

Q. (Presenting another photograph.) Were you present when this was made?

A. Yes, sir.

132 Q. Who is that fine-looking young man there (indicating)?
A. There are three of them; the best looking one is myself.

Q. At what point was that taken?

A. That was taken at the point marked here "hill which forms a little valley, N. W. mon."

Q. Is it the point designated on this map as "N. W. mon."?

A. Yes, sir.

By Mr. FORD: I also offer that one.

Q. (Presenting another photograph.) Were you present when this was taken?

A. Yes, sir.

Q. State what it is.

A. This is a photograph of the point marked "cazadero," the north half of it.

Q. The point designated on this map as "cazadero"?

A. Yes, sir.

Q. (Presenting another photograph.) Were you present when this was taken? And, if so, state what it is.

A. Yes, sir; that is a photograph of the other half of that same place called the "cazadero" here on the map. This is the south half of it.

Q. (Presenting another photograph.) Were you present when this was taken? And, if so, state what it is.

A. Yes, sir; I was.

Q. What is it?

A. That is at the place marked "high hill," "E. cen. mon."

Q. (Presenting another photograph.) Were you present when this was taken? If so, state what it is.

A. Yes, sir; I was. That is a photograph of that high red mountain.

Q. At what place on the Roskrugs map?

A. Well, the mountains are marked "high mountain," easterly from the E. cen. mon.

Q. (Presenting another photograph.) Were you present when this was taken? If so, state what it is.

A. Yes, sir; I was there.

Q. What does it represent?

A. That is a photograph of the place marked "S. E. mon."

Q. At the chain of hills on the map?

A. Yes, sir; chain of hills.

133 Q. (Presenting another photograph.) What is that?

A. That is the same monument; photograph of place marked "chain of hills, S. E. mon."

Q. (Presenting another photograph.) What is that, if you know?

A. That ridge there in the centre is the ridge marked here "ledge," at the S. W. centre monument.

Q. (Presenting another photograph.) Please state what that is.

A. That is a photograph of the place marked "high white hill, N. E. mon."

Q. Will you please state where the point designated as the initial monument is with reference to any ranches in that vicinity, by name?

A. The initial monument or the abandoned place of Sonoita?

Q. Yes; the "abandoned place of Sonoita," I would say.

A. It is about half a mile, I should say, from Mr. Richardson's ranch—I think they call it the Gardiner ranch now—about half a mile further down the valley than that ranch, and I should say about a mile or so up the valley from the mill known as the Trask mill, I believe.

Q. How is it with reference to Morgan's ranch?

A. Morgan's ranch and Richardson's ranch are the same ranch now.

The photographs identified by the witness were all offered and admitted in evidence and marked respectively with the letters of the alphabet in their alphabetical order as offered.

Cross-examination.

By Mr. BARNES:

Q. Take the photograph marked "Sonoita, at S. E. corner," that shows a gentleman standing there with his hand on a tripod, with stones all around here—stones all around to the right and left and in front and behind—the whole country covered with stones.

A. Yes, sir; but not piled up like this.

Q. These are thrown together?

A. Yes, sir.

Q. Are your feet there in that picture on the ground or on stones, or don't you remember?

A. I am right on top of the monument.

Q. Now, take the photograph marked "at N. E. monument looking up the valley that turns to the east." That takes in a little larger view, does it not?

A. Yes, sir.

Q. Are those rocks piled together under your feet?

A. Yes, sir.

Q. And rocks scattered all around to the right and to the left?

A. Yes, sir; but not piled up.

Q. Are there places where you find them thrown together besides that one?

A. How far from that?

Q. Within any reasonable radius—within a quarter of a mile.

A. Oh, yes; lots of them.

Q. And that is true about the one you spoke of last. You found piles of stones around within a quarter of a mile piled together?

A. I am not so sure of that.

Q. Now, the ridge of rocks, the W. cent. mon, seen from the cuates, can you tell, taking the centre foreground and looking over the ridge, what direction you look?

A. Yes, sir; we are standing here at the twin hills and looking in this direction and in the direction of the northwest monument.

Q. Then you are standing at the twin hills on the map looking across the centre monument towards the northwest, substantially?

A. Yes, sir.

Q. Now, the one marked "N. W. mon.," there seems to be rocks all around there in that neighborhood?

A. Yes, sir.

Q. Where the two other gentlemen are sitting, the rocks
135 were around there, too?

A. Yes, sir; this is a great big monument there.

Q. Lots of rocks thrown together there?

A. Yes, sir.

Q. You were not there when they were thrown together?

A. No, sir; I was not.

Q. Now, the picture called "cuates, seen from the west centre monument," standing in the centre of foreground, what direction do you look?

A. We are standing right here at the ridge of rocks and looking towards the southeast.

Q. You are looking back this way again (indicating on map)?

A. Yes, sir; that is the reverse of the other.

Q. Now, the one marked "cuates" again is another view looking in what direction about from the centre?

A. Well, I should judge that was somewhere about here (indicating).

Q. Looking southwest?

A. I should judge so, but I can't tell very well.

Q. Now, the one called "cazadero," looking north, with a gentleman in the foreground with a tripod, in that picture you see that ledge of rocks standing out prominent?

A. Yes, sir.

Q. You see that sort of formation all up and down the valley frequently—a common occurrence?

A. Lots of ridges of rocks; yes, sir.

Q. Cropping out?

A. Yes, sir.

Q. Where does the trail run?

A. Across, like that (indicating).

Q. How far down from those rocks, down to where the gentleman is standing in that picture or about there?

A. About 75 or 100 yards from the point here.

Q. The trail runs along the base of that ridge?

A. It is not a continuous ledge; it is just a blowout of rocks.

136 Q. And the trail passes by it?

A. So that you may understand, this ledge of rocks is on the north and this (indicating) on the south, and there is a space of about 200 yards between here and here (indicating), forming a little sag.

Q. And the trail goes between the ledges of rock?

A. Yes, sir.

Q. Are there a great many other places where you go between ledges of rocks coming from the mesas there?

A. Not just like that.

Q. I don't mean just like that in shape, but outcropping ledges all along the railroad there. Don't you see them there for several miles?

A. I suppose there are places where the road goes through rocks, but no place I would call a cazadero, though.

Q. Are not these little valleys breaking through between them often?

A. It is merely a divide or a sag between them; it is not a valley.

Q. Now, looking at the picture "E. cent. mon., high hill," where you stand with a tripod in the centre, it seems to be all rocky around there and all around here (indicating)?

A. Yes, sir; lots of rock.

Q. And just thrown together here? They are dug out in the centre?

A. Yes, sir.

Q. In what direction are we looking from the centre of this foreground to the red mesa?

A. Southeast direction.

Q. Where do we stand on the map, as near as you can tell?

A. About here, at the "old abandoned place of Sonoita."

Q. And looking towards the southeast?

A. Yes, sir; or towards the east almost.

137 Q. Looking along the red line from the initial monument to High hill?

A. In that direction ; yes, sir.

Q. This one at southeast corner—there seems to be rocks all around that country there ?

A. Yes, sir.

Q. And just thrown together here ?

A. Yes, sir.

Q. How far are those twin hills from what we may call the Sykes hotel, at Calabasas station ?

A. About two miles and a half from there.

Q. How far from the old Tumacacori Mission church ?

A. About 12 miles from there.

Q. How far from the butte where the Potrero house is built—the old Pete Kitchen home ?

A. About eight and a half miles.

Q. Now, in that country and in the hills adjacent to the Sonoita valley, as all over this country, don't you find here and there buttes ?

A. Yes, sir.

Q. Often ? It is not an uncommon phenomena ?

A. No, sir ; it is not.

Q. Don't you often find two together, or more ?

A. Yes, sir.

Q. Sometimes alone and in groups and in all sorts of conditions ?

A. Yes, sir ; but not exactly like these, you know.

Q. I understand that, because no two buttes are exactly alike.

A. But these are alike.

By Mr. FORD :

Q. How are they with reference to any other twin buttes—the two of them ?

A. They are distinct and entirely unlike to anything surrounding them. They are alike each other and entirely different from anything around there.

Q. What scope of country do you mean when you say " around there " ?

A. All through the Sonoita valley there is not any other two buttes that is just like them.

Q. That is, the two as two, as different from any others ?

138 A. Yes, sir.

Q. And the two, as two, are noticable as being exactly alike ; is that your idea ?

A. Yes, sir.

By Mr. BARNES :

Q. You say they are alike ; do you mean alike in formation or in geology or in matter of appearance ?

A. They are alike in geological formation as well as in the appearance of their profile.

Q. They stand up there as independent of the surrounding country?

A. Yes, sir.

Q. And at other points you find buttes that stand up independent from surrounding country?

A. Yes, sir.

Q. But you don't happen to find them right around there within a mile or two?

A. There is nothing there like them in that country at all.

Q. But there are other buttes there that these are not like?

A. Oh, yes.

Q. And other buttes there that you don't find anything like in that neighborhood?

A. I suppose so; yes.

Q. Therefore there is no particular point in saying that you do not find any other buttes like these?

A. No; all I wanted to say was that these are buttes which are like each other and unlike any of the surrounding country.

Q. There are other hills not just like these buttes?

A. Yes, sir; they are all that way.

By Mr. FORD:

Q. Yes; you mean if these are not like others, then those others are not like these?

A. Exactly; that is what I meant.

Q. Yes; that is all.

139 I hereby certify that the foregoing is a full, true, and correct transcript of my shorthand notes of proceedings had upon the trial of the above-entitled cause in the U. S. court of private land claims, also of my official report of the evidence of F. W. Oury given upon the trial of said cause in the district court of the first judicial district of the Territory of Arizona in and for the county of Pima, as referred to in the stipulation in regard to said evidence of said F. W. Oury in the foregoing transcript of report.

Dated Tucson, Arizona, May 12, 1894.

BRYAN W. TICHENOR,

Acting Official Reporter of U. S. Court of Private Land Claims.

140 (DEFENDANTS' EXHIBIT.)
(Translation of Original Expediente.)

Year 1821.

Copy of Land Title.

San Jose de Sonoita, situated near Tubac, surveyed in favor of Don Leon Herreros.

141 (Stamp, fifty cents, duly canceled.)

To the treasurer general of the State of Sonora:

Santiago Ainsa, a resident of Tucson, Territory of Arizona, as
12-181

representative of Frank Ely, before you with due respect appear and say that Mr. Frank Ely, being the owner of the Rancho San Jose de Sonoita, and not having the title or expediente of said ranch, because it is deposited in the office of the surveyor general of the United States, and having need of a copy of said expediente for his own information and protection, I ask of you to be pleased to order a copy of said expediente to be given me, duly certified, for such use as Mr. Frank Ely may think proper to make of it. I protest that I do not proceed with any bad intent, etc.

Hermosillo, November 23, 1887.

SANTIAGO AINSA.

(Seal treasurer general of the State of Sonora.)

HERMOSILLO, *November 24, 1887.*

Presented and admitted. Let a copy of the title referred to in the preceding communication be given to the petitioner.

Y. AGUILAR.

(Second seal, twelve reales. Years 1825 and 1826.)

Juan Miguel Riesgo, commissary general of the treasury, public credit and war of the State of the Occident :

Inasmuch as article 81 of the royal ordinances of intendentes, of December 4, 1786, confers on these magistrates the power and jurisdiction of surveys, sales and settlements of lands within their respective districts, the purport of which in words is as follows, to wit :

Art. 81. The intendentes shall also act as special judges in matters and cases which take place within the limits of their respective provinces in regard to the sale, settlement and apportionment of the public lands, the holders of which and those who desire the acquisition of new grants to them, may obtain their titles and formulate their petition before the said intendentes, so that these matters, having consulted with the attorney of the royal treasury whom they shall appoint, they (the intendentes) shall pass upon and determine according to law, with the approval of their customary secretaries, and receive the appeals to the junta superior de hacienda or to report to it in case the intendentes interpose objections, sending along the original documents when they are completed for obtaining title, in order that, being examined by it, they may return them or grant title, if there be no fault found, or that before issuing the title the proceedings found incomplete may be corrected, whereby great inconveniences might occur, and the proper confirmation may be made, which the junta superior shall issue in its proper time, as well as the intendente, their substitutes and representatives, in conformity to the royal instructions of October 15, 1754, in whatever may not be in contradiction to this, without losing sight of the wise provisions of the laws cited in it and that of the law 9, title 12, libro 4.

In virtue thereof, and proceedings being instituted on behalf of

Don Leon Herreros, a resident of the presidio of Tubac, before the intendente, asking for the land in a place known as Sonoita, situated in that jurisdiction, his petition was accepted, giving the necessary power to the commander of the company, furnishing him with the accompanying writs, and his act of obedience being as follows, to wit:

Petition.

Sr. intendent governor:

Leon Herreros, resident of the military post of Tubac, with all due respect appeared before you and said that to the east of said post, about eight leagues distant from it, more or less, is situated a place known as Sonoita, which had been anciently an Indian town and was abandoned by reason of the incursions of the Apache
143 Indians, being situated very near their customary hiding places, and even now the locality is exposed to the same danger, having to provide a place to herd some of my cattle and having no lands on which to do so, in the royal name of his majesty I register in the aforesaid place two sitios of land, which, I promise to stock with cattle and horses, being ready to pay his majesty the just price at which they may be valued.

Wherefore I humbly ask and pray of your honor to order the same to be surveyed, and to institute all the other proceedings necessary to obtain the title and confirmation of the same. I swear that I do not act with a bad intent, and to all that is necessary, etc.

For LEON HERREROS,
JOSE MA. SOTELO.

ARIZPE, May 29, 1821.

Presentation acknowledged and petition granted without prejudice to third parties, should any others have a better right. The commander of the company stationed at Tubac shall proceed to the surveying of the lands registered by the petitioner, summoning adjoining owners; he will appoint experts to appraise the land at its just value, which he will publish for thirty consecutive days, asking bidders, and execute all the proceedings required by law till the expediente is completed to a condition to be remitted in proper order for further proceedings in this special tribunal so as to issue the corresponding grant.

CORDERO.

Tubac, June 22, 1821.—It is hereby ordered that what is commanded in the foregoing decree of the Brigadier General Cordero, governor and intendente of the provinces of Sonora and Sinaloa, be carried into effect, and for that purpose, the interested party being notified, as well — the adjacent owners, if there be any, and accompanied by the necessary officials who shall be appointed for the purpose, I will proceed to the ancient abandoned place of Sonoita, in order to survey the two sitios denounced. Don Ygnacio Elias
144 Gonzales, lieutenant commander and subdelegate of the military post of Tubac, to that end so determined, ordered and

signed, with the assisting witnesses with whom I act in the absence of the regular clerk, according to law.

YGNACIO ELIAS GONZALES.

Asst.: JOSE MA. SOTELO.
PEDRO RAMIREZ.

On the same day and year, I, the said lieutenant commandant, there being present Don Leon Herreros, notified him of and made known to him the foregoing order, which he acknowledged and the summons of which he accepted, and he not knowing how to sign, I did so myself, with those of my assistants, in the ordinary form, which I attest.

YGNACIO ELIAS GONZALES.

Asst.: YGNACIO ORTIZ.
JOSE MA. SOTELO.

In the aforesaid military post and company of Tubac, on the said day, month and year, I, the said commandant, in order to proceed to the survey of the land claimed, and to appoint the officers necessary, did so, appointing Manuel de Leon, lieutenant of the presidio of Tubac as counter and marker, and Jose Ma. Sotelo and Jose Monreal, residents of the said Tubac, as chainmen, who being present accepted said appointment, taking each for himself the usual oath, in the proper form, to discharge well and faithfully their duty, without fraud, according to the best of their ability, and those who knew how signed with me for themselves, and for those who could not I signed, which I did with those of my assistants in the ordinary form, which I attest.

YGNACIO ELIAS GONZALES.
JOSE MA. SOTELO.
MANUEL DE LEON.

Asst.: YGNACIO ORTIZ.
TOMAS DE ORTIZ.

On the 25th day of the month of June, of 1821, being at the old, deserted place of Sonoita, accompanied by the interested party, the appointed officers and assisting witnesses, I ordered before anything else that a general reconnoissance be made of the place claimed, examining it very carefully on both sides, and after it was carefully viewed, I found it to be a place where there are some old standing walls which show by the ruins that it was anciently inhabited, and at a distance from these ruins towards the northeast something like half a league off there is a spring that runs in a ravine towards the south having various turns, ending by emptying westwardly into the river that leads to this military post, though dry, as the water disappears at a distance of two leagues more or less before it joins it in the neighborhood of Calabasas. In the said cañon there are several small strips of arable land, and on one side of this cañon and on the other there appear nothing else than continuous mountains and hills; and just now the claimant has some pieces of land under cultivation, occupying said lands and

keeping sheep and swine. In witness whereof I make note of it here, which I sign with those of my assistants in the ordinary form, which I attest.

YGNACIO ELIAS GONZALES.

Asst.: YGNACIO ORTIZ.
TOMAS DE ORTIZ.

In the ancient abandoned place of San Jose de Sonoita, on the 26th day of the month of June, 1821, I, the said lieutenant commander and subdelegate of the military post and company of Tubac and its jurisdiction, in order to make the survey of the land denounced by Don Leon Herreros of this vicinity, delivered to the appointed officials a well twisted and stretched cord and in my presence was delivered to them a castilian vara, on which cord were measured and counted fifty regulation varas, and this being done, at each were tied poles, and standing on the spot assigned by the claimant as the centre, which was in the very walls of the already-mentioned Sonoita, there were measured in a northeasterly direction sixty-three cords, which ended at the foot of some low hills, a little ahead of a spring — a chain of mountains of a valley which goes on and turns to the east, where was placed a heap of stones as a monument; and being about to return to the centre, the

146 claimant expressed a desire that the survey should be continued down the cañon until the two sitios should be completed, that on each side we should survey to him only twenty-five cords, because if the survey should extend further, by reason of the broken-up condition of the country and the rocky hills in sight, such land would be useless to him, saying, at the same time, that, continuing the measurement along the cañon (because it was impossible to go in any other direction on account of the roughness of the ground), by reason of the many turns that had to be made, so many cords should be deducted from the total number measured, as would be calculated to result in excess of the real length measured, taken on a straight line, and considering his demand reasonable I ordered the continuation of the survey as follows, to wit:

From the place where the monument was placed there *was* measured to the southeast twenty-five cords, which going up the valley ended on the left side of a chain of hills, and at the foot of one of them, whose slope was covered with oak trees; and on the top was placed a heap of stones as a monument; and on the opposite side there *was* estimated also twenty-five cords, ending on a high white hill covered with grass, distinguished by this reason from the others near it, which are part of the Santa Rita mountains, and on the top I ordered a heap of stones to be placed as a monument. In this way the measurement was finished at this end of the survey, with its proper corners and heads. Turning to the centre the cord was measured in the direction of the east, and there were measured and counted twenty-five cords, ending before reaching a high mountain located on this side, on a somewhat high hill, covered with many oak trees, where I ordered a heap of stones in sign of a monument.

Returning to the centre the cord was laid towards the west and twenty-five cords were measured, ending on the main road to Tubac, on a little hill called the "casadero," on which was placed a
 147 heap of stones as a monument. Whereupon the survey was suspended, as it was late, to continue it tomorrow morning. And to attest it, I noted down in the proceeding, which was signed with me by my assistant witnesses and the appointed officers who could write, and the claimant did not sign because he said he could not write, all of which I certify.

YGNACIO ELIAS GONZALES.
 MANUEL DE LEON.
 JOSE MA. SOTELO.

Asst.: YGNACIO ORTIZ.
 TOMAS DE ORTIZ.

In the aforesaid place of Sonoita, on the 27th day of the said month and year, I, the said lieutenant commander, in order to continue the survey suspended yesterday, accompanied by the officers appointed, taking as starting point the place designated as the centre, the cord was extended towards the south all along down the cañon, by which there were measured and counted three hundred and twelve cords, that ended in the same cañon upon going down a hill, on the main road, at a place called the first ford, with the direction looking towards the west, on account of the turn which the said cañon had made, and there was put a heap of stones as a monument, and as heads or corners there were estimated on the side twenty-five cords, to the other side of a ledge that ends in high rolling boulders in which a hill that forms a little valley, where I ordered to be placed a heap of stones as a monument. And on the left side there were estimated by the surveyors twenty-five cords to the first of two hills, almost exactly alike, one to the other, which are named the twins, which serves as a monument as these are distinguished from all the other hills which surround them, and on the summit I ordered to be placed across. This end of the survey is about two leagues, more or less, off from the Calabasas ranch, at the nearest place, and the other end only adjoins with places frequented by the enemies as they come to rob and invade the country. And in view of the suggestion made by the claimant, to reduce the number of cords actually measured so much as
 148 might be calculated to be in fact in excess of the true measurement by reason of the many turns of the cañon over which the survey was made, as it could not be carried on straight, I appointed for that purpose Lieutenant Don Manuel Leon and the citizen Don Jose Ma. Sotelo, who were unanimously of the opinion to deduct twenty-five cords out of the three hundred and twelve cords measured in the last survey down the cañon, the claimant consenting thereto as just; the survey was calculated to be two hundred and eighty cords, with which this survey was finished, resulting from it one sitio and three-fourths of another sitio, registered by Don Leon Herreros for raising stock and for farming purposes;

being put in possession and he being satisfied with the said survey, he was admonished that he should at the proper time designate his boundaries with monuments of stone and mortar as is provided ; and as he could not write I signed myself with the appointed officials who could, and the assisting witnesses in default of the regular clerk.

YGNACIO ELIAS GONZALES.
MANUEL DE LEON.
JOSE MA. SOTELO.

Asst.: YGNACIO ORTIZ.
TOMAS DE ORTIZ.

Forthwith, I, the same lieutenant commander, for the purpose of appraising and valuing the surveyed land in favor of Don Leon Herreros, of this place, consisting of one sitio and three-fourths of another, ordered that there should be appointed as appraisers, and I appointed as such appraisers, Don Manuel de Leon and the neighbor Don Jose Ma. Sotelo officers as tallymen and surveyor of the said land which they had examined well and gone over in detail, who being present I made known to them the said appointment, which they accepted, and each was sworn in the form that corresponds to each to discharge properly and faithfully this duty, without deceit, fraud or any subterfuge. In virtue thereof they said that according to and because of the examination they
149 had made and being aware of the existing regulations on the subject, the price should be fixed at, and they fixed it at, sixty dollars for each sitio, because they have running water and several banks of arable land which can be made use of by cultivation ; and these proceedings having been read to them, they confirmed and ratified their decision and they signed with me and assisting witnesses in the ordinary form, which I attest.

YGNACIO ELIAS GONZALES.
JOSE MA. SOTELO.
MANUEL DE LEON.

Asst.: YGNACIO ORTIZ.
TOMAS DE ORTIZ.

At the military post of Tubac, on the 28th day of June, 1821, I, the said lieutenant commander, having returned to the said place, and in virtue of the foregoing proceedings of survey and appraisalment of the lands of San Jose de Sonoita, composed of one sitio and three-fourths of another for raising cattle and horses, ordered that it be put at auction for thirty consecutive days, as is prescribed by the Brigadier Don Antonio Cordero, and intendente of the provinces of Sonora and Sinaloa, and accepting bids that may result ; and by these presents I so provided, ordered, and signed, with assistant witnesses in due form, which I attest.

YGNACIO ELIAS GONZALES.

Asst.: YGNACIO ORTIZ.
TOMAS DE ORTIZ.

First auction. At the military post and company of Pimas of Tubac, on the 29th of June, 1821, I, the same lieutenant commander and subdelegate of said post, ordered that by the beating of drums some individuals should be summoned to the public square of said place, and that in the presence of all those there Reyes Cruz, who was employed as a crier, should say in a loud and clear voice: "The lands of the place of San Jose de Sonoita, situate in this jurisdiction, and comprising one sitio and three-quarters of another, for raising cattle, surveyed in favor of Don Leon Herreros, of this place, and appraised in the sum of one hundred and five 150 dollars, at the rate of sixty dollars per sitio, are offered for sale for royal account. Whoever desires to make an offer, let him do so before me, and it will be accepted when so made." And there being no bidder, I made note of it, which I signed with the assistant witnesses in the ordinary form, which I attest.

YGNACIO ELIAS GONZALES.

Asst.: JOSE MA. SOTELO.
PEDRO RAMIREZ.

2d. At the same place, on the 30th day of the said month and year, another auction was held exactly alike in all particulars and with the same formalities of the formal one, and there being no bidder, it was so noted in the process, which I signed with my assistants in the ordinary form, which I attest.

YGNACIO ELIAS GONZALES.

Asst.: JOSE MA. SOTELO.
PEDRO RAMIREZ.

3d. At the said place, on the 1st of July of the same year, the same auction was held, and as there resulted no bidder, it was so noted in the process, which I signed with those of my ordinary assistants, which I attest.

YGNACIO ELIAS GONZALES.

Asst.: JOSE MA. SOTELO.
PEDRO RAMIREZ.

4. At the said place, on the 2d day of the said month and year, there was held another auction in the same terms, and there being no one to better the offer, I set it down in the process, which I sign with my assistants in the ordinary form, which I attest.

YGNACIO ELIAS GONZALES.

Asst.: JOSE MA. SOTELO.
PEDRO RAMIREZ.

5. At the said place, on the 3d day of the said month and year, the same auction was held, and there being no bidder, I set it down in the process, which I sign with those of my assistants in the ordinary form, which I attest.

YGNACIO ELIAS GONZALES.

Asst.: JOSE MA. SOTELO.
PEDRO RAMIREZ.

151 6. At said place, on the 4th day of the said month and year, there was the same auction, and there being no bidder, it was noted in the process, which I signed with those of my assistants in the ordinary form, which I attest.

YGNACIO ELIAS GONZALES.

Asst.: JOSE MA. SOTELO.
PEDRO RAMIREZ.

7. At the said place, on the 5th day of the said month and year, there was another auction, and there being no bidder, it was noted in the process, which I signed with those of my assistants in the ordinary form, which I attest.

YGNACIO ELIAS GONZALES.

Asst.: JOSE MA. SOTELO.
PEDRO RAMIREZ.

8. At the said place, on the 6th day of the said month and year, the same auction was held, and there being no bidder, it was so noted in the process, which I signed with those of my assistants in the ordinary form, which I attest.

YGNACIO ELIAS GONZALES.

Asst.: JOSE MA. SOTELO.
PEDRO RAMIREZ.

9. At the same place, on the 7th day of the said month and year, another auction was held, and there being no bidder, it was noted in the process, which I signed with those of my assistants in the ordinary form, which I attest.

YGNACIO ELIAS GONZALES.

Asst.: JOSE MA. SOTELO.
PEDRO RAMIREZ.

10. At the same place, on the 8th day of the same month and year, there was a similar auction, and there being no bidder, it was noted in the proceedings, which I signed with those of my assistants in the ordinary form, which I attest.

YGNACIO ELIAS GONZALES.

Asst.: JOSE MA. SOTELO.
PEDRO RAMIRES.

11. At the same place, on the 9th day of the said month and year, there was another auction, and there being no bidder, it was noted in the process, which I signed with those of my assistants in the ordinary form, which I attest.

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YGNACIO ELIAS GONZALES.

Asst.: JOSE MA. SOTELO.
PEDRO RAMIREZ.

12. At the same place, on the 10th day of the said month and year, there was held a like auction, and there being no bidder, it was noted in the process, which I signed with those of my assistants in the ordinary form, which I attest.

YGNACIO ELIAS GONZALES.

Asst. : JOSE MA. SOTELO.

PEDRO RAMIREZ.

13. At the said place, on the 11th day of said month and year, there was another auction, and there being no bidder, it was noted in the process, which I signed with the witnesses of my assistants in the ordinary form, which I attest.

YGNACIO ELIAS GONZALES.

Asst. : JOSE MA. SOTELO.

PEDRO RAMIREZ.

14. At the same place, on the 12th day of the said month and year, there was a like auction, and there being no bidder, it was noted in the process, which I signed with those of my assistants in the ordinary form, which I attest.

YGNACIO ELIAS GONZALES.

Asst. : JOSE MA. SOTELO.

PEDRO RAMIREZ.

15. At said place, on the 13th day of the said month and year, a similar auction was held, and there being no bidder, it was noted in the process, which I signed with those of my ordinary assistants, which I attest.

YGNACIO ELIAS GONZALES.

Asst. : JOSE MA. SOTELO.

PEDRO RAMIREZ.

16. At the said place, on the 14th day of the said month and year, there was a similar auction, and there being no bidder, it was noted in the process, which I signed with those of my assistants in the ordinary form, which I attest.

YGNACIO ELIAS GONZALES.

Asst. : JOSE MA. SOTELO.

PEDRO RAMIREZ.

153 17. At the said place, on the 15th day of the said month and year, there was another auction, and there being no bidder, it was noted in the process, which I signed with those of my assistants in the ordinary form, which I attest.

YGNACIO ELIAS GONZALES.

Asst. : JOSE MA. SOTELO.

PEDRO RAMIREZ.

18. At the same place, on the 16th day of the said month and year, there was a similar auction, and there being no bidder, it was noted in the process, which I signed with those of my assistants in the ordinary form, which I attest.

YGNACIO ELIAS GONZALES.

Asst.: JOSE MA. SOTELO.
PEDRO RAMIREZ.

19. At the same place, on the 17th day of said month and year, there was another auction, and there being no bidder, it was noted in the process, which I signed with those of my assistants in the ordinary form, which I attest.

YGNACIO ELIAS GONZALES.

Asst.: JOSE MA. SOTELO.
PEDRO RAMIREZ.

20. At the same place, on the 18th day of said month and year, there was another auction, and there being no bidder, it was noted in the process, which I signed with those of my assistants in the ordinary form, which I attest.

YGNACIO ELIAS GONZALES.

Asst.: JOSE MA. SOTELO.
PEDRO RAMIREZ.

21. At the said place, on the 19th day of the said month and year, there was a similar auction, and there being no one to better the offer, it was noted in the process, which I signed with those of my assistants in the ordinary form, which I attest.

YGNACIO ELIAS GONZALES.

Asst.: JOSE MA. SOTELO.
PEDRO RAMIREZ.

22. At the said place, on the 20th day of the said month and year, there was another auction, and as there was no bidder, it was noted in the process, which I signed with those of my assistants in the ordinary form, which I attest.

YGNACIO ELIAS GONZALES.

Asst.: JOSE MA. SOTELO.
PEDRO RAMIREZ.

23. At said place, on the 21st day of the said month and year, a similar auction was had, and there appearing no bidder, it was noted in the process, which I signed with those of my assistants in the ordinary form, which I attest.

YGNACIO ELIAS GONZALES.

Asst.: JOSE MA. SOTELO.
PEDRO RAMIREZ.

24. At the same place, on the 22d day of said month and year, there was another auction, and there being no bidder, it was noted in the process, which I signed with those of my assistants in the ordinary form, which I attest.

YGNACIO ELIAS GONZALES.

Asst.: JOSE MA. SOTELO.
PEDRO RAMIRES.

25. At the said place, on the 23d day of said month and year, there was held a similar auction, and there appearing no bidder, it was noted in the process, which I signed with those of my ordinary assistants which I attest.

YGNACIO ELIAS GONZALES.

Asst.: JOSE MA. SOTELO.
PEDRO RAMIREZ.

26. At the same place, on the 24th day of said month and year, there was another auction and there being no bidder, it was noted in the process, which I signed with those of my assistants in the ordinary form, which I attest.

YGNACIO ELIAS GONZALES.

Asst.: JOSE MA. SOTELO.
PEDRO RAMIREZ.

27. At the said place, on the 25th day of the said month and year, there was a similar auction, and there appearing no bidder, it was noted in the process, which I signed with those of my assistants in the ordinary form, which I attest.

YGNACIO ELIAS GONZALES.

Asst.: JOSE MA. SOTELO.
PEDRO RAMIREZ.

155 28. At said place, on the 26th day of said month and year, there was another auction, and there being no bidder it was noted in the process, which I signed with those of my assistants in the ordinary form, which I attest.

YGNACIO ELIAS GONZALES.

Asst.: JOSE MA. SOTELO.
PEDRO RAMIREZ.

29. At the same place, on the 27th day of the said month and year, there was a similar auction and there appearing no one to better the offer, it was noted in the process, which I signed with those of my assistants in the ordinary form, which I attest.

YGNACIO ELIAS GONZALES.

Asst.: JOSE MA. SOTELO.
PEDRO RAMIREZ.

30. At the military post of Tubac, on the 28th day of the month of July, 1821, I, the said lieutenant commandant and subdelegate of the same place caused by the beating of drums various persons of the said place to gather together in the public square, and in the presence of all bystanders I caused the crier in a clear and loud voice to say: "The lands of the place of San Jose de Sonoita, situate in this jurisdiction, and comprising one sitio and three-fourths of another, for raising cattle and horses, and some arable lands, surveyed in favor of Don Leon Herreros, resident of this place, and appraised at one hundred and five dollars, at the rate of sixty dollars each sitio, are offered for sale for royal account. Whoever wants to make a bid, let him make it before me, and it shall be admitted, whatever it may be." And there being no one to better the offer, the same notice having been repeated for three different times the same, at last the crier said, "One, two, three, going, going, going, good, may it do good to Don Leon Herreros." And to attest it I signed with the witnesses of my assistants in default of a clerk, and the interested party did not do so because he did not know how to write, which I attest.

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YGNACIO ELIAS GONZALES.

Asst.: JOSE MA. SOTELO.
PEDRO RAMIREZ.

At the military post of Tubac, on the 28th day of the said month and year, I, the said subdelegate ordered that inasmuch as these surveys, appraisements and auctions have been concluded, and as there is lacking only the information to be furnished by the interested party of his capability, by three witnesses, as is now the practice, the interested party be notified to present them, in order to proceed in said investigation. In witness whereof, I enter it in the process, which I signed with those of my assistants, which I attest.

YGNACIO ELIAS GONZALES.

Asst.: JOSE MA. SOTELO.
PEDRO RAMIREZ.

Forthwith Don Leon Herreros, a citizen of this place, being present, I made known to him the foregoing order, and having seen it he presented the witnesses asked of him, and he did not sign because he did not know how, and I did so with those of my assistants in the ordinary form, which I attest.

YGNACIO ELIAS GONZALES.

Asst.: JOSE MA. SOTELO.
PEDRO RAMIREZ.

At the same military post of Tubac, on the 31st day of July, 1821, I, the said lieutenant commander and subdelegate of the same place, in compliance with my foregoing order, Mr. Leon Herreros having presented as a witness Jose Ma. Sigueiros, of this place, in person, whom I attest that I know, took his oath by God our Lord and the sign of the cross, by which he offered to tell the truth concerning

what he knew and was asked of him; and being questioned if the said Leon Herreros had any means and property to enable him to occupy the place of Sonoita, which had been laid off to him, composed of one and three-quarter sitios, he said that he knows that he has means to occupy and possess said sitios and besides that he has cattle and sheep; which he affirmed and reiterated when this
 157 declaration was read to him. He declared that he was about forty years old, and as he did not know how to write I signed with those of my assistants in the ordinary form, which I attest.

YGNACIO ELIAS GONZALES.

Asst.: JOSE MA. SOTELO.
 PEDRO RAMIREZ.

In the said place, on the said day, month and year, I, the said lieutenant commandant the second witness, Jose Moureal, resident of this place presented by Don Leon Herreros, being personally present, whom I attest that I know, took his oath in the name of God our Lord and the sign of the cross, by which he promised to tell the truth in what he knew and what might be asked of him, and being questioned the same as the former (witness), if the said Herreros had means and property to occupy and possess the one and three-quarter sitios which had been surveyed to him in the place of Sonoita, he said that he has property and means to occupy it; and this declaration having been read to him, he ratified the same and said he was thirty-six years old, and he not knowing how to write did not sign, and I signed with those of my assistants in the customary form, which I attest.

YGNACIO ELIAS GONZALES.

Asst.: JOSE MA. SOTELO.
 PEDRO RAMIREZ.

Forthwith, on said day, month and year, I, the said lieutenant commander, there being present the third witness presented by Don Leon Herreros, Francisco Ortega, in person, whom I attest that I know, took his oath by God our Lord and the sign of the cross, by which he promised to tell the truth concerning what he knows and what may be asked of him, and he being questioned in the same terms as the former witness, said that the said Herreros has property and means to occupy and possess the apportioned land, and this declaration having been read to him, he ratified what he has said, and said he was twenty-two years old; and because he did not know how to write he did not sign, which I did with those
 158 of my assistants in the ordinary form, which I attest.

YGNACIO ELIAS GONZALES.

Asst.: JOSE MA. SOTELO.
 PEDRO RAMIREZ.

At the said military post of Tubac, on the 1st of August, 1821, this expediente being concluded, let it be forwarded to the governor intendente of these provinces of Sonora and Sinaloa, with notification

to the interested party, so that he may go to Arizpe to attend the auctions of the said lands, which will take place at the provincial junta of that capital. I, the same lieutenant commander, so decreed, ordered and signed.

YGNACIO ELIAS GONZALES.

Forthwith, on the said day, month and year, Don Leon Herreros being present, he was notified of and made acquainted with the foregoing decree, and, acknowledging the citation, he did not sign, because he did not know how, which I did with those of my assistants in default of a clerk, according to law.

YGNACIO ELIAS GONZALES.

Asst.: JOSE MA. SOTELO.
PEDRO RAMIREZ.

NOTE.—This expediente was forwarded on the 20th of October, 1821, to the governor intendente of this province. In witness whereof I signed it.

Arizpe, October 25, 1821.

To the promotor fiscal of the public treasury.

GONZALES.
BUSTAMANTE.

Senor governor intendente:

The promotor fiscal of this treasury has examined carefully the expediente of the lands surveyed in favor of Don Leon Herreros, resident of the military post of Tubac, by the Commissioner Don Elias Ygnacio Gonzales, lieutenant commander of the post, in the place called San Jose de Sonoita, in that jurisdiction, from which resulted one sitio and three-fourths of another, for raising stock and horses, valued at sixty dollars each sitio, which sums up one hundred and five dollars, as it has running water and some pieces of land fit for cultivation; and having published the land for thirty consecutive days, there were no bidders to offer more than the appraisement, and thereupon the commissioner proceeded to inquire as to the three qualifications required, by which it appeared that the claimant had the means to settle and occupy the land. Wherefore the subscriber asks if you consider it advisable to order the three publications at this capital, calling for bidders, and to auction off the land to the one who offers the highest price, understanding that he will have to pay to the national treasury the whole value of the land, (18 %) eighteen per cent. for forwarding, two per cent. for the general fund, and three dollars for the officials of the extinguished treasury department, giving him the necessary receipt of credit for the sum total, which must be joined to this expediente, and send report to the junta superior de hacienda publica, to be advised as to what it shall determine. Nevertheless, you may do as you think best.

Arizpe, November 7, 1821.

FRANCISCO PEREZ.

Arizpe, November 7, 1821.—In accordance with the opinion of the promotor fiscal in the foregoing answer, let the three public auctions take place of the lands to which this expediente refers, summoning Don Jose Maria Serrano, attorney of Don Leon Herreros. The intendente and jefe politico ad interim of these provinces so decreed and signed it with the assistant witnesses in default of a clerk.

BUSTAMANTE.

Asst.: JOSE MA. MENDOZA.
JOAQUIN ELIAS GONZALES.

Forthwith Don Jose Maria Serrano being present, he was personally notified of the foregoing decree and answer, which he acknowledged and signed with the intendente and the assistant witnesses in default of clerk.

BUSTAMANTE.
JOSE MA. SERRANO.

Asst.: JOSE MA. MENDOZA.
JOAQUIN ELIAS GONZALES.

160 1st auction. At the city of Arizpe, on the 8th day of the month of November, 1821, there *was* convened as a board of auction the intendente as president and the members composing the board, in order to make the first auction of the lands referred to in this expediente. They caused many persons to collect by the beating of drums at the office of the intendencia, and in their presence they made the crier Loreto Salcido announce, as he did in a loud and clear voice saying: "There is to be auctioned at this board of auction one sitio and three-fourths of another of public lands, for raising cattle, comprised in the place of San Jose de Sonoita, in the jurisdiction of the military post of Tubac, surveyed in favor of Don Leon Herreros, resident of the same, and appraised in the sum of one hundred and five dollars, at the rate of sixty dollars per sitio; whoever wants to make a bid on it, let him do so before this board which will admit it if done properly; with the understanding that at the third and last auction, which will take place the day after tomorrow, the property will be sold to the highest bidder." In these terms were concluded these proceedings without anybody applying, and in testimony thereof this annotation was made and was signed by the said gentlemen, the president and members of the board.

BUSTAMANTE.
ESCALANTE.
FUENTE.
PEREZ.

In the same city, on the 9th day of said month and year, the second auction was held of the public lands referred to in this expediente, in the same terms and with the same solemnities as the former one, without there being any bidder this time; for the

proper evidence of which it was noted and the said president and members of the board signed it.

BUSTAMANTE.
 ESCALANTE.
 FUENTE.
 PEREZ.

3d auction. At the said city, on the 10th day of the month of November, 1821, there being called as a board of auction the president and members of the board that compose it, in order to hold the third and last auction of the lands referred to in these proceedings, a call was made by the said Loreto Salcido in a loud and intelligible voice, similar in every particular to the one of the first auction, with the only difference that he announced to the public that now the sale will definitely be made. It being already the midday prayer of this day, without there being any bidder, the crier said at last, "One, two, three; going, going, going; good, good, to Don Leon Herreros." In which terms, there appearing only his attorney Don Jose Maria Serrano, offering the amount of appraisal, this proceeding was concluded, there being solemnly sold the said one sitio and three-quarters of another, which compose the public land surveyed referred to in this expediente; and in testimony of the same this statement is noted down and is signed by the said attorney and the president and members of the board of auction.

BUSTAMANTE.
 ESCALANTE.
 FUENTE.
 PEREZ.
 JOSE MA. SERRANO.

Arizpe, November 10, 1821.—Let this expediente pass over, with the authorized copy, containing the superior proceedings according to the regulation on the subject, to the attorney, Don Jose Ma. Serrano, so that within three days he may take such steps as he may think proper on the subject, notifying him to appoint in Mexico an attorney duly authorized and paid to expedite the case at that court. The intendente *ad interim* so decreed it and signed it with assistant witnesses according to law, in default of a secretary, there being none.

BUSTAMANTE.

Asst.: JOSE MA. MENDOZA.
 JOAQUIN ELIAS GONZALES.

NOTE.—On the same day this expediente was delivered in seventeen folios according to this decree.

Senor intendente interino:

162 Jose Maria Serrano, resident of this city, in the name of and as attorney for Don Leon Herreros, appears before you and says that making prompt and faithful return of this expediente—181

pediente, and of the testimony which was separately delivered to me, I proceed to state that inasmuch as these proceedings are in conformity with and regulated according to the superior regulation on the subject contained in the said expediente; and being satisfied with the process up to the public auction, it only remains for me to ask of your sense of justice to be pleased to hasten the course of this expediente to a perfect conclusion, so that when approved by the superior junta of the treasury your special tribunal under your charge may issue the corresponding title of grant and confirmation which even now I petition for in the name of my principal, of one sitio and three-quarters of another of the public lands disposed of in these proceedings; being ready, as I am ready, to appoint in Mexico a duly authorized and paid attorney to manage the business in that court. Wherefore I request of you to do as I ask, by which my principal will receive favor. In his name I protest as to all that is necessary, etc.

JOSE MA. SERRANO.

In the city of Arizpe, on the 12th day of November of the year 1821, the honorable intendente interino of this province of Sonora and Sinaloa, Don Ygnacio de Bustamante, having examined these documents of the survey, appraisement, auctions and sale of the lands of the place called San Jose de Sonoita, situated within the jurisdiction of the military post of Tubac, and containing one sitio and three-quarters of another, for raising stock, in favor of Don Leon Herreros, of the same vicinity, the answer given by the agent as appears by the foregoing instrument, with everything else that was necessary, said that declaring, as I do declare, the said proceedings to be in good order and form, and allowing, as I now allow, that settlement should be made

with the national treasury for the said public lands by the
 163 said Don Leon Herreros, I should order that notice be given to his agent to proceed to deliver to the treasury of this city the sum of \$116, 2 reales, 5 grains in the following fashion: \$105 as the value of said land; \$6 1 r. 7 gr. as land fee and its eighteen per cent. \$2 10 gr. for the two per cent. for the general fund, and \$3 as fees of the extinguished account of the same treasury. The certificate thereof being inserted in this expediente, the same shall be reported to the junta superior de hacienda for its approbation, or to make such disposition as to them may appear best; and by this instrument be it so provided, ordered and signed with the assistant witnesses in default of the regular clerk, which he has not, as he should have by law.

YGNACIO DE BUSTAMANTE.

Asst.: JOSE MA. MENDOZA.

JOAQUIN ELIAS GONZALES.

Forthwith, the attorney, Don Jose Maria Serrano, being present, he was personally notified of the foregoing order, which he acknowledged and signed with the intendente and assistant witnesses in default of a secretary.

BUSTAMANTE.
JOSE MARIA SERRANO.

Asst.: JOSE MA. MENDOZA.
JOAQUIN ELIAS GONZALES.

Provincial board of the national treasury, Arizpe, November 12, 1821.—Examined. It is declared forthwith that the public auction sale of one sitio and three-quarters of another of the public lands contained in the place of San Jose de Sonoita, situated in the jurisdiction of the military post of Tubac, which was made by the auction board of this city on the 10th day of the present month, in favor of Don Leon Herreros, resident of the said Tubac, for the sum of one hundred and five dollars, is legally and solemnly executed. Therefore let report be made to the superior board of the treasury, of this expediente for its approbation or for such disposition as may be proper. It was so determined and signed by
164 the president and members of the provincial junta.

BUSTAMANTE.
ESCALANTE.
FUENTE.
PEREZ.

Arizpe, November 12, 1821.—Let the foregoing order of the provincial board of this intendencia be executed.

BUSTAMANTE.

The principal offices of the national treasury of Arizpe and its province.

We certify that on folio 37 of the account book of the present year we made the following entry:

November 12. Half annual charge of lands.

Charged one hundred and sixteen dollars, two reales and five grains paid by Don Jose Maria Serrano in the name of and as attorney for Don Leon Herreros, resident of the company of Pimas at Tubac, in the following manner: One hundred and five dollars as the principal value for which was auctioned by this intendencia one sitio and three-quarters of another of lands for raising cattle contained in the place of San Jose de Sonoita, situated in the jurisdiction of said company; six dollars, one real and seven grains for the said half annual charge and eighteen per cent. for transfer to Spain; two dollars, ten grains for the two per cent. as a general charge, and the three dollars as dues for the extinguished account, as is explained by the order of the intendencia marked No. 32, \$116 2r. 5g.

ESCALANTE.
FUENTE.
JOSE MARIA SERRANO.

And that it may be admitted wherever it may be presented, we issue the present.

Arizpe, November 12, 1821.

MIGUEL MA. DE LA FUENTE.

TOMAS DE ESCALANTE.

NOTE.—On May 15, 1825, title was issued on this expediente.

[RUBRICA]

I certify that Santiago Ainsa paid at this office the sum of five dollars including the twenty-five per cent. federal dues for legalizing the signature of the treasurer general, by the superior governor of the State.

Hermosillo, December 20, 1887.

V. AGUILAR.

| | | |
|-----|-------------------------|---------------|
| 165 | Dues of the State | \$4 00 |
| | 25 % federal | 1 00 |
| | Sum | <u>\$5 00</u> |

The treasurer general of the State of Sonora, who subscribes this, certifies that the foregoing copy agrees with the original title that exists in the archives of this office. It is faithfully copied in twenty-one legal folios with the corresponding stamps duly canceled.

Hermosillo, December 21, 1887.

V. AGUILAR.

(Seal: Republica Mexicana. Tesoreria General del Estado de Sonora.)

(Seal: Republica Mexicana. Gobierno Constitucional del Estado Libre y Soberano de Sonora.)

Ramon Corral, constitutional vice-governor of the State of Sonora, acting as governor.

I certify that the foregoing signature of the citizen Victor Aguilar, treasurer general of the State, is the same that he uses in all his public acts, and in order to give it full faith wherever it may be necessary, I give the present at Hermosillo on the 21st of December, 1887.

RAMON CORRAL.

ENRIQUE MONTEVERDE, *Secretary*.

(Seal: Republica Mexicana. Gobierno Constitucional del Estado Libre y Soberano de Sonora.)

(Endorsed :) Filed in the office of the clerk, court of private land claims, February 5, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

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OFFICE OF SURVEYOR GENERAL,
TUCSON, ARIZONA, *January 4th, 1894.*

I hereby certify that the paper attached hereto is a correct copy of the paper it purports to be a transcript of, on file in this office.

[Seal U. S. Surveyor General's Office, District of Arizona.]

LEVI H. MANNING,
U. S. Surveyor General, District of Arizona.

DEFENDANTS' EX. "B."

Título.

De merced, y confirmacion de un sitio y tres cuartos de otro mensurados á favor de D. Leon Herreras vecino de Tubac hubicados, en el Parajo nombrado San Jose de Sonoyta.

| | | | |
|-----|-----------------------------|-----------------|---------------------------|
| 167 | Sello Segundo 12 Reales. | (Seal.) | Años de 1825 y 26. |
|-----|-----------------------------|-----------------|---------------------------|

Juan Miguel Riesgo Comisario General de Hacienda Credito publico y Guerra del Estado de occidente :

Por cuante el arto. 81 de la Real Ordenanza de Yntendentes de 4 de Diciembre de 1786, confiere á estos Magistrados el conocimiento y jurisdiccion de Medidas, ventas y composiciones de tierras de sus respectivos distritos cuyo tenor á la letra es como sigue.

Arto. 81. Tambien séran los Yntendentes Jueces privativos de las dependencias y causas que ocurrieren en el distrito de sus Provincias, sobre ventas, composiciones y repartimientos de tierras, realengas y de señorío, debiendo los poseedores y los que pretendan nuevas concepciones de ellas deducir sus derechos y formalizar sus solicitudes ante los mismos Yntendentes, pa que instruidos lejitimamente estos negocios con un promotor de mi Real Fisco q. nombren, los determinen segun dro. con dictamen de sus asesores ordinarios, y admitan las apelaciones á la Justa Superior de Hacienda, ó la dén cuenta en defecto de interponer recurso los Yntendentes. con los autes originales cuando los estimen en estado de despachar el título, á fin de q. vistos pr. ella se los debuelvan, ó bien pa. que la espidan sino se la ofrece reparo, ó pa. q. antes de ejecutarlo, evacuen las diligencias q. hechare inenos la Junta y les previniese: mediante lo cual podrán recaer si no nuevos embarazos las correspondientes confirmaciones que librará á su debido tiempo la misma Junta Superior, procediendo

ella en el asunto, como tambien los Yntendentes, sus subdelegados y demas con arreglo á lo dispuesto en la Rl. Ynstruccion de 15. de Octubre de 1754, en cuanto no se opongan á lo rsuelto pr. esta, sin perder de vista las saludables disposiciones de las Leyes que en ella se cita y de la 9. título 12. Libro 4°.

En su consecuencia y habiendose formado Expediente á pedimento de D. Leon Herreras vecino del Presidio de Tubac ante el Sor. Yntendente denunciando el terreno nombrado Sonoita, cito en aquella jurisdiccion, le fue admitido dando comision bastante al Comandte. de aquella Compania, se proveyo de conformidad á su continuacion, cuyo escrito, proveido y auto de obediencia son como sigue.

Escrito.

Señor Yntendente Gobernador:

Leon Herreros vecino del Puesto Militar de Tubac, ante V. S. con el respeto debido paresco y digo: Que rumbo al Oriente del citado Puesto á distancia de ocho Leguas poco mas ó menos se halla el parage nombrado Sonoyta, Pueblo antiquísimo q. fue de Yndios y despoblado á causa de las incursiones de los Yndios Apaches, pr. hallarce situado en terreno muy inmediato en donde acostumbran arrochelarse, y á pesar de que en el día continua en el mismo riesgo, en atencion á mantener algunos bienes de campo, y no tener terrenos donde man-

Sello Cuarto.

(Seal.)

Años de

1 Quartillo.

1825 y 26.

tenerlos, en el Real nombre de S. M. (Q. D. G.) registra en el mencionado puesto dos sitios de tierras los mismos que me prometo poblar con ganado y caballada, estando pronto á pagar á S. M. el justo precio en que sean abaluados. Por tanto=A V. S. ren-
169 didamente pido y suplico se sirva mandar se proceda á la practica de su mensura y demas diligencias q. necesario fueren hasta obtener el titulo de merced y confirmacion. Juro no ser de malicia y lo necesario, &c.

A ruego DE LEON HERREROS,
JOSÉ MA. SOTELO.

Proveido.

Arispe 29. de Mayo de 1821.—Por presentado y admitido sin perjuicio de tercero que tenga mejor dro. El Comandte de la Compañía de Tubac procederá á la mensura de los terrenos que el presentante registra, citando á los colindantes y nombrará peritos valuadores q. hagan su justiprecio; el cual pregonerá pr. treinta dias solicitando postores y practicará todas las diligencias de estilo hasta poner el Expediente en estado de remitirmelo, pa. las que se han de actuar en este Juzgado Privativo, á fin de expedirle titulo de merced correspondiente.

CORDERO.

Auto de Obedecimiento.

Tubac 22. de Junio de 1821.—Cumplase lo mandado en el anterior decreto, del Sor. Brigadier D. Antonio Cordero, Gobernador e Yntendente de estas Provincias de Sonora y Sinaloa y al efecto, con citacion del interesado, y colindantes si los hubiere, y acompañado de los oficiales necesarios que al efecto se nombrarán, pasese pr. mi al despoblado antiguo de Sonoita, con el fin de q. se proceda á la mensura de los dos sitios denunciados: Dn. Ygnacio Elias Gonzalez, Teniente Comandante y Subdelegado del Puesto Militar de la Com-

pañia de Tubac, pr. este auto asi lo determiné, mandé y firme con testigos de asistencia con quienes actua afalta de Escribano publico.
YGNACIO ELIAS GONZALEZ.

Asistència : JOSÉ MA. SOTELO.

Asistencia : PEDRO RAMIREZ.

Seguidamente procedió el propio Subdelegado al nombramiento de los oficiales respectivos que lo fueron los ciudadanos
170 Manuel de Leon, José Ma. Sotelo, y D. José Monreal, quienes bajo de juramento en forma ofrecieron cumplir bien y fielmente sus encargos; y con previa vista de ojos y citacion de colindantes practicó la mensura como consta de la diligencia que sigue

Diligencia de Medidas.

En el despoblado antiguo de S. Jose de Sonoyta en veinte y seis dias del mes de Junio de mil ochocientos veinte y un años. Yo el expresado Teniente Comandante y Subdelegado del Puesto Militar y Compa. de Tubac y su jurisdiccion pa. dar principio á la mensura del terreno denunciado por D. Leon Herreros de esta vecindad, entregué una cuerda bien torcida y estirada á los oficiales nombrados, y en mi presencia se les entregó una vara castellana en la cual se midieron y contaron de dicha cuerda cincuenta varas usuales, y hecha esta operacion se amarraron en ambos extremos una hasta, y puestos en el punto fixo q. señaló el denunciante pr. centro, q. fué en las mismas paredes del citado Sonoyta se midieron y contaron rumbo entre Norte y Oriente sesenta y tres cordeles q. remataron poco mas adelante del ojo de agua al pie de unas lomititas vajas cordillera de un balle que sigue pa. adelante, y dá buelta pa. el Oriente, en donde se puso un monton de piedras en señal de Mohonera, y queriendo volver al centro, manifestó el interesado se continuase la medida por todo el cajon abajo hasta completarle sobre poco mas 6 menos los dos sitios, y por cada uno de ambos lados se le diese unicamente veinte y cinco cordeles, en atencion á que pasando adelante, pr. la fragosidad de la continuacion y asperidades de cerros q. estaban á la vista le era aquel terreno inutil, diciendo asi mismo que yendo el corder pr. todo el cajon (pr. no poder caminar pr.

171 ninguno de los otros rumbos por su fragosidad) pr. las muchas bueltas que en este debian de darse, se rebajase aquella parte de cordeles, que se graduasen podian resultar demas respecto de no ir la medida linea recta, y considerando justa su solicitud mandé se continuase la medida en los terminos siguientes; desde el punto de la mohonera puesta se fueron midiendo y contando entre Oriente y Sur veinte y cinco cordeles que remataron

Sello Cuarto

(Seal.)

Años de

1 Quartillo.

1825 y 26.

pr todo el valle arriba al lado izquirdo de una cordillera de lo mas al pie de una de ellas cubierta en su falda de algunos ensinos, y en su altura se puso un monton de piedras en señal de mohoneras, y

pa. el lado opuesto se graduaron otros veinte y cinco cordeles en una loma alta blanca cubierta de puro zacate, distinguida pr. esta causa de las demas q. se hallan á su inmediacion cordillera de la Sierra de Santa Rita, y en su cumbre mandé se pusiese un monton de piedras en señal de Mohonera, quedando concluida pr. este rumbo la medida, con sus correspondientes esquinas ó cabeceras: y bueltos al centro se tendió el cordel pr. el lado del Oriente y se fueron midiendo y contando los veinte y cinco cordeles hasta rematar antes de llegar á una sierra alta colorado que se halla pr. este rumbo, en una loma algo alta cubierta de muchos encinos en donde mandé se pusiese un monton de piedras en señal de mohonera, y bueltos al centro siguió en cordel al lado opuesto del Poniente y se midieron y contaron los veinte y cinco cordeles, hasta rematar pr. todo

172 el camino Real que sigue pa. el Puesto de Tubac en una lomita en donde se nombra el

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(Seal.)

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1 Quartillo.

1825 y 26.

Cazedero en la cual se puso un monton de piedras en señal de mohonera; en cuya disposicion se suspendieron estas medidas por ser ya tarde pa. continuarlas el dia de mañana. Y. pa. constancia lo pongo pr. diligencia que firmaron conmigo y testigos de asistencia los oficiales nombrados q. supieron y no lo hizo el interesado pr. que dijo no sabia escribir, de todo lo, cual doy fé.

YGNACIO ELIAS GONZALEZ.

MANUEL DE LEON.

JOSÉ MA. SOTELO.

Asistencia: YGNACIO ORTIZ.

Asistencia: TOMAS DE ORTIZ.

Continuacion de Medidas.

En el referido puesto de Sonoita en veinte y siete dias del citado mes y año. Yo el espresado Teniente Comandante á efecto de continuar con la medida suspendia el dia de ayer, acompañado de los oficiales nombrados, puesto en el punto que se fixo pr. centro se tendió el cordel rumbo al Sur pr. todo el cojon abajo, por el cual se fueron midiendo y contando trescientos doce cordeles que remataron sobre el mismo cajon al bajar una mesa pr. el camino Real donde llaman el primer vado, y ya con el rumbo al poniente pr. la buelta que dicho cajon ha dado, en donde se puso un monton de piedras en señal de mohonera y pr. cabeceras ó esquinas al lado derecho se graduaron los veinte y cinco cordeles al otro lado de una cuchilla q. á su fin se presenta un desbarrancadero de penas elevadas en un cerrito donde hace un corto callecito, donde mandé poner otro monton de piedras en senal de mohonera, y al lado izquierdo se

173 graduaron igualmente pr. los medidores los veinte y cinco cordeles en el primero de dos cerritos casi iguales que les nombran los cuates, el cual sirve de mohonera, pr. ser estos distin-

guidos al demas lomerio que los circunda, y en su cumbre mande se pusiese una cruz; al remate de esta medida sobre poco mas ó menos, se halla colindante con el Rancho de Calabazas cosa de dos leguas, y pr. la otra cabecera solo colinda con terreno de entradas y salidas, pr. donde entran y salen los enemigos á cometer sus robos y hostilidades y en atencion á la propuesta hecha por el denunciante de la rebaja de cordeles que se graduaron podian graduar demas en virtud de las muchas bueltas del cajon por donde se llevó el cordel, pr. no poder ir linea recta, nombré pa. el efecto al Teniente D. Manuel de Leon y vecino D. José Ma. Sotelo quienes unanimes y conformes fueron de sentir que se hiciese con la de veinte y cinco cordeles de los trescientos doce cordeles que se dieron en la ultima medida cajon abajo, pr. lo tanto conformandose con ello por hallarlo de justicia quedo la medida en doscientos ochenta y siete cordeles, con lo que se concluyeron estas medidas resultando de todas ellas uno y tres cuartos sitios registrados pr. D. Leon Herreros pa. cria de ganado mayor, y cultivar las tierras de pan llevar y dandose por recibido y quedando conforme con las espresadas medidas se le advirtió que oportunamente señalase sus linderos con mohoueras de cal y canto segun esta prevenido, y pr. no saber firmar lo hice yo con los oficiales nombrados que supieron y testigos de asistencia á falta de Escribano.

YGNACIO ELIAS GONZALEZ.
MANUEL DE LEON.
JOSÉ MA. SOTELO.

Asistencia: YGNACIO ORTIZ.

Asistencia: TOMAS ORTIZ.

Yncontinenti procedió el Comisionado al correspondiente 174 abaluo, que con arreglo á las superiores disposiciones q. rigen en la materia fue el de ciento cinco pesos pr. los referidos un sitio y tres cuartos de otro, y con el cual se saco al pregon por el termino de treinta dias consecutivos en solicitud de postores. No resultó ninguno y en este estado ocurrió el interesado con el Espectante á esta Comisaria, la que por decreto de 21. de Octubre lo pasó á la vista del Promotor Fiscal cuya respuesta es la q. sigue.

Pedimento Fiscal.

Senor Gobernador Yntendente:

El Promotor Fiscal de esta Hacienda, ha visto con detenida atencion este Expediente de tierras mensuradas en favor de Dn.

Sello Cuarto.

(Seal.)

Años de

1 Quartillo.

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Leon Herreros vecino del Puesto Militar de Tubac, pr. el Comisionado D. Ygnacio Elias Gonzalez Teniente Comandante de dicho Puesto, en el parage nombrado San José de Sonoita de aquella misma Jurisdiccion, de la que resultó un sitio y tres cuartos de otro

pa. cria de ganado Mayor y Caballada valuados á razon de sesenta pesos cada sitio que hacen la suma de ciento cinco pesos por tener agua corriente y algunos ancones de tierra de pan llevar, y habiendolos sacado al pregon pr. treinta dias consecutivos, no resulto postor alguno que mejorase dicho abaluo pr. lo. q. procedió en seguida el comisionado á recibir las tres informaciones de idoneidad las que acreditan tener el interesado suficientes proporciones pa. mantener poblado y amparado el terreno. En tal virtud, pide el que responde se sirva V. si lo tubiese á bien mandar celebrar las tres publicas almonedas en esta Capital convocando postores y rematando el terreno en el mas abentajado que resulte, haciendole entender debe enterar en esta Tesoreria Nacional el total valor de las tierras, su media

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anata diez y ocho por ciento de su conduccion, dos por ciento mandado exhigir pr. punto general y los tres pesos correspondientes á los oficiales de la extinguida Contaduria, expidiendole la necesaria certificacion que acredite dicho entero, la que deberá unirse á este Expediente y darse cuenta con el á la Junta Superior de Hacienda publica, pa. la resolucion que tenga á bien tomar, ó no obstante V. dispondra lo mejor.

Arispe, 7 de Nobiembre de 1821.

FRANCO. PEREZ.

Y habiendose conformado esta Comisaria General con el preinserto pedimento, se procedió á la celebracion de las tres publicas Almonedas que se practicaron en los dias 8. 9. y 10 de Nobiembre de 1821, quedando solemnemente rematados el expresado sitio y tres cuartos de otro á favor de su denunciante D. Leon Herreros. En acto continuo se le corrió traslado con el Expediente original á su apoderado: contesto pr. escrito estar conforme con todo lo actuado, que se le admitiese á composicion con la hacienda; y q. se le librase á su parte el correspondiente titulo de mercid y conformacion. En tal virtud se proveyó el auto en vista q. á la letra sigue. En la Ciudad de Arispe á los doce dies del mes de Nobiembre de mil ochocientos veinte y uno: El Sor. Yntendente Ynterino de estas Provincias de Sonora y Sinaloa D. Ygnacio de Bustamente, habiendo visto estas diligencias de medidas, aprecio, pregones, Almonedas y remate de las tierras realengas del parage nombrado S. José de Sonoyta, sito en Jurisdiccion del Puesto Militar de Tubac, y comprensivo de un sitio y tres cuartos de otro pa. cria de Ganado Mayor, á favor de D. Leon Herreros, de la misma vecindad: la respuesta dada pr. su apoderado, segun consta del antecedente Escrito, con todo lo demas que ver convino, Dixo: Que declarando como de clara pr. bastantes, conformes y arregladas dhas diligencias; y admitiendo como desde luego admite á composicion con la Hacienda Nacional por el expresado Realengo al referido D. Leon Herreros: debia mandar y mandó se notifique y haga saber á su

apoderado proceda á enterár en las cajas de esta Ciudad la cantidad de ciento dies y seis pesos dos reales cinco granos en esta forma: ciento cinco pesos por el valor principal del indicado terreno: seis pesos un real siete granos por el correspondiente derecho de media anata y su diez y ocho por ciento: dos pesos diez granos respectivos al dos por ciento mandado exigir por punto general; y los tres pesos restantes por derechos de la Contaduria extinguida del mismo ramo: y realizado que sea en citado entero, poniendose certificacion que lo acredite en este Expediente, se dara cuenta con el mismo á la Junta Superior de Hacienda, pa. su aprovacion ó la resolucion q. convenga: Y pr. este auto asi lo proveyó mandó y firmó con testigos de asistencia á falta de escribano q. no le hay conforme á derecho.

YGNACIO DE BUSTAMENTE.

Asistencia: JOSÉ MA. MENDOZA.

Asistencia: JOAQUIN ELIAS GONZALEZ.

Notificada q. fué esta providencia al apoderado procedió este á hacer el entero que se le previene, como lo acredita la certificacion qe. se agregó al Expediente respectivo, en cuyo conformidad queda custodiado en esta Comisaria general pa. la perpetua constancia.

Por Tanto: Usando de las facultades que pr. el preinserto Arto. 81 de la Real Ordenanza de Yntendentes me están concedidas, y conforme á lo dispuesto pr. la Real Ynstruccion de 15. de Octubre de 1754. que en el mismo articulo

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(Seal.)

Años de

1 Quartillo.

1825 y 26.

se cita por el presente á nombre de la Nacion Soberana de la Republica Mejicana Q. D. G. confiero merced y confirmacion de los un sitio y tres cuartos de otro qe. se ha mensurado á favor del referido D. Leon Herreros vecino de Tubac, en cuyo distrito se halla dicho terreno la q. pr. via de venta y con las calidades q. previenen las Leyes, le concedo, doy, y adjudico, pa. si, sus hijos, herederos y sucesores, con todas sus entradas, salidas usos, costumbres, servidumbres, maderas, montes, pastos, aguages, abrebaderos y demas q. le correspondan con la precisa calidad de que haya de amparar y cultivar dicho terreno, procurando su mayor posible incremento sin que se verifique estar despoblado por tiempo alguno, bajo el apercibimiento de que si se verificare su total abandono pr. espacio de un año completo, y hubiese persona que lo denunciare en tal evento con previa calificacion del hecho, se adjudicará en el mejor postor que resultare: haciendole tambien esta adjudicacion á D. Leon Herreros, con la condicion de q. haya de limitarse bajo sus respectivos terminos y linderos especificados en la diligencia de mensura, los cuales deberan señalarse con Mohoneras de cal y canto: Mandando como mando y ordeno á los Alcaldes constitucionales que al presente son y en adelante fueren del Presidio de Tubac, no permitan que el supre dicho interesado ni sus sucesores, sean per-

turbados ni perjudicados en el libre uso, ejercicio y dominio del repetido terreno antes si celarán y cuidarán de que sean amparados y mantenidos siempre en quieta y pacífica posesion de ellas. En cuyos terminos mandé librar y libro el presente titulo de Merced y confirmacion á favor del enunciado D. Leon Herreros y sucesores: el que con previa toma de razon en el libro correspondiente, se entregará original al propio interesado para su resguardo y demas usos q. le convengan como legitimo propietario, dueño absoluto y unico poseedor de la mencionada tierra. Dado en la Villa del Fuerte á quince de Mayo de mil ochocientos veinte y cinco: Autorizado y firmado de mi mano, sellado con el sello de esta Comisaria, por ante los testigos de mi asistencia á falta de Escribano.

JUAN MIGUEL RIESGO.

Assa.: JOSÉ MARIA MENDOZA.

Assa.: ANTO. APALATEGUI.

Queda tomada razon de este titulo en la foxa 3 del Quaderno N. 2^o que existe en esta Comisaria General.

(Endorsed :) Filed in the office of the clerk, court of private land claims, January 15, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

[Endorsed :] F. No. 6. No. 40. In the court of private land claims, Arizona district. The United States of America vs. Santiago Ainsa, adm'r, *et al.* San José de Sonoita grant. Certified copy of original titulo. Filed Jan. 15, 1894. James H. Reeder, clerk, by R. L. Long, dep. clerk. Rochester Ford, att'y for Ainsa, adm'r.

179

DEFENDANTS' EX. C.

Translation.

Translation.

Titulo of the sale and confirmation of one sitio and three-fourths of another, surveyed in favor of Don Leon Herreros, resident of Tubac, situated in a place called San Jose de Sonoita.

180

(Seal for the years 1825, 1826.)

Juan Miguel Riesgo, commissary general of the treasury, public credit and war, of the State of the Occident :

Inasmuch as article 81 of the royal ordinances of intendentes, of December 4, 1786, confers on these magistrates the power and jurisdiction of surveys, sales and settlements of lands, within their respective districts, the purport of which in words is as follows, to wit:

Art. 81. The intendentes shall also act as special judges in matters and cases which take place within the limits of their respective provinces in regard to the sale, settlement and apportionment of the public lands, the holders of which, and those who desire the acquisition of new grants to them, may obtain their titles and for-

mulate their petition before the said intendentes, so that these matters, having consulted with the attorney of the royal treasury whom they shall appoint, they (the intendentes) shall pass upon and determine according to law, with the approval of their customary secretaries, and receive the appeals of the "junta superior de hacienda" or to report to it in case the intendentes interpose objections, sending along the original documents when they are completed, for obtaining title, in order that, being examined by it, they may return them, or grant title, if there be no fault found, or that before issuing the title, the proceedings found incomplete may be corrected, whereby great inconvenience might occur, and the proper confirmation may be made, which the junta superior shall issue in its proper time, as well as the intendente, their substitutes and representatives, in conformity to the royal instructions of October 15, 1754, in whatever may not be in contradiction to 181 this, without losing sight of the wise provisions of the laws cited in it and that of the law 9, title 12, libro 4.

In virtue thereof and proceedings being instituted on behalf of Don Leon Herrero, a resident of the presidio of Tubac, before the intendente, asking for the land in a place known as Sonoita, situated in that jurisdiction, his petition was accepted, giving the necessary power to the commander of the company, furnishing him with the accompanying writs, and his act of obedience being as follows, to wit:

Petition.

Sr. intendente governor:

Leon Herreros, resident of the military post of Tubac, with all due respect appeared before you and said: That to the east of said post about eight leagues distant from it, more or less, is situated a place known as Sonoita, which had been anciently an Indian town and was abandoned by reason of the incursions of the Apache Indians, being situated very near their customary hiding places, and, even now the locality is exposed to the same danger, having to provide a place to herd some of my cattle and having no lands where to do it, in the royal name of his majesty I register in the aforesaid place two sitios of land, which I promise to stock with cattle and horses, being ready to pay his majesty the just price in which they may be valued.

Wherefore I humbly ask and pray of your honor, to order the same to be surveyed, and to institute all the other proceedings necessary to obtain the title and confirmation of the same. I swear that I do not act with a bad intent and all that is necessary, &c.

For LEON HERREROS,
JOSE MA. SOTELO.

Decree.

ARIZPE, 29th of May, 1821.

182 Presentation acknowledged and petition granted without prejudice to third parties, should any others have a better right. The commander of the company stationed at Tubac,

shall proceed to the surveying of the lands registered by the petitioner, summoning adjoining owners; he will appoint experts to appraise the land at its just value, which he will publish for thirty consecutive days asking bidders, and execute all the proceedings required by law till the expediente is completed to a condition to be remitted in proper order for further proceedings in this special tribunal so as to issue the corresponding grant.

CORDERO.

Acceptance.

Tubac, June 22, 1821.—It is hereby ordered that what is commanded in the foregoing decree of the Brigadier General Cordero, governor and intendente of the provinces of Sonora and Sinaloa, be carried into effect, and for that purpose, the interested party being notified, as well as the adjacent owners, if there be any, and accompanied by the necessary officials who shall be appointed for the purpose, I will proceed to the ancient abandoned place of Sonoita, in order to survey the two sitios denounced. Don Ygnacio Elias Gonzales, lieutenant commander and subdelegate of the military post of the company of Tubac, to that end I so determined, ordered and signed with the assistant witnesses with whom I act in default of the regular clerk.

YGNACIO ELIAS GONZALES.

Assistants:

JOSE MA. SOTELO.

PEDRO RAMIEREZ.

Forthwith the said subdelegates proceeded to nominate the legal officials, to wit; the citizens Manuel de Leon, Jose Ma. Sotelo
183 and Don Jose Monreal, who, upon their oath, promised to perform well and faithfully their mission, and after taking a general view of the place and the limits of the adjacent proprietors, executed the survey as appears from the following report:

In the abandoned place of San Jose de Sonoita, on the twenty-sixth day of June, 1821, I, the said lieutenant commander and subdelegate of the military post and company of Tubac and its jurisdiction, in order to make the survey of the land denounced by Don Leon Herreros of this vicinity, delivered to the appointed officials a well twisted and stretched cord, and in my presence was delivered to them a castilian vara, on which cord was measured and counted fifty regulation varas, and this being done, at each end were tied poles, and standing on the spot assigned by the claimant as the centre, which was in the very walls of the already-mentioned Sonoita, there were measured in a northeasterly direction sixty-three cords, which ended at the foot of some low hills, a little ahead of a spring, — a chain of mountains of a valley which goes on and turns to the east, where was placed a heap of stones as a monument; and, being about to return to the centre, the claimant expressed a desire that the survey should be continued down the cañon until the two sitios should be com-

pleted, that on each side we should survey to him only twenty-five cords, because if the survey should extend further, by reason of the broken-up condition of the country and the rocky hills in sight, such land would be useless to him, saying, at the same time, that, continuing the measurement along the cañon, (because it was impossible to go in any other direction on account of the roughness of the ground), by reason of the many turns that had to be made, so many cords should be deducted from the total number measured as would be calculated to result in excess of the real length measured, taken on a straight line; and considering his demand reasonable, I ordered the continuation of the survey as follows, to wit:

From the place where the monument was placed there *was* 184 measured to the southeast twenty-five cords, which going up a valley ended on the left side of a chain of hills, and at the foot of one of them, whose slope was covered with oak trees, and in the top was placed a heap of stones as a monument; and on the opposite side there *was* estimated also twenty-five cords, ending on a high white hill covered with grass, distinguished by this reason from the others near it, which are part of the Santa Rita mountains, and on the top I ordered a heap of stones to be placed as a monument. In this way the measurement was finished at this end of the survey, with its proper corners and heads. Turning to the centre, the cord was measured in the direction of the east, and there were measured and counted twenty-five cords, ending before reaching a high mountain located on this side, on a somewhat high hill, covered with many oak trees, where I ordered to be put a heap of stones in sign of a monument. Returning to the centre, the cord was laid towards the west and twenty-five cords were measured, ending on the main road to Tubac, on a little hill called the "casadero," on which was placed a heap of stones as a monument. Whereupon the survey was suspended, as it was late, to continue it tomorrow morning. And to attest it, I noted down in the proceeding, which was signed with me by my assistant witnesses and the appointed officers who could write, and the claimant did not sign because he said he could not write, all of which I certify.

YGNACIO ELIAS GONZALES.
MANUEL LEON.
JOSE MA. SOTELO.

Assistants:

YGNACIO ORTIZ.
TOMAS ORTIZ.

Continuation of the Survey.

In the aforesaid place of the Sonoita, on the twenty-seventh day of the said month and year, I, the said lieutenant commander, in order to continue the survey suspended yesterday, accompanied by 185 the officers appointed, taking as a starting point the place designated as the center, the cord was extended towards the south all along down the cañon, by which there were measured and counted three hundred and twelve cords, that ended in the same cañon upon .

going down a hill, on the main road, at a place called the first ford, with the direction looking towards the west, on account of the turn which the said cañon had made, and there was put a heap of stones as a monument, and as heads or corners there were estimated on the side twenty-five cords, to the other side of a ledge that ends in high rolling boulders in which a hill that forms a little valley, where I ordered to be placed a heap of stones as a monument. And on the left side there were estimated by the surveyors twenty-five cords to the first of two hills, almost exactly alike, one to the other, which are named the twins, which serves as a monument as these are distinguished from all the other hills which surround them, and on the summit I ordered to be placed a cross. This end of the survey is about two leagues, more or less, off from the Calabasas ranch, at the nearest place, and the other end only adjoins with places frequented by the enemies as they come to rob and invade the country. And, in view of the suggestion made by the claimant, to reduce the number of cords actually measured, so much as might be calculated to be in fact in excess of the true measurement by reason of the many turns of the cañon over which the survey was made, as it could not be carried on straight, I appointed for that purpose Lieutenant Don Manuel Leon and the citizen Don Jose Ma. Sotelo, who were unanimously of the opinion to deduct twenty-five cords out of the three hundred and twelve cords measured in the last survey down the cañon, the claimant consenting thereto as just; the survey was calculated to be two hundred and eighty cords, with which this survey was finished, resulting from it one sitio and three-fourths of another sitio, registered by Don Leon Herreros for raising stock and for farming purposes, being put in possession and he being satisfied with the said survey, he was admonished that he should at the proper time designate his boundaries with monuments of stone and mortar as is provided, and as he could not write I signed myself with the appointed officials who could, and the assisting witnesses in default of the regular clerk.

YGNACIO ELIAS GONZALES.
MANUEL DE LEON.
JOSE MA. SOTELO.

Assistants:

YGNACIO ORTIZ.
TOMAS ORTIZ.

Immediately thereafter the commission proceeded to appraise the land, which, by the superior regulations laid down on the subject, was valued at one hundred and five dollars for the one sitio and three-quarters of another, and at which value it was published thirty consecutive days for bidders. None appearing, the claimant presented himself with the expediente at this office, which by decree of October 21, I send to the promotor fiscal, whose answer was as follows, to wit:

Opinion of Promotor Fiscal.

Senor governor intendente :

The promotor fiscal of this treasury has examined carefully the expediente of the lands surveyed in favor of Don Leon Herreros, resident of the military post of Tubac, by the Commissioner Don Ygnacio Elias Gonzales, lieutenant commander of the post, in the place called San Jose de Sonoita, in that jurisdiction, from which resulted one sitio and three-fourths of another, for raising stock and horses, valued at sixty dollars each sitio, which sums up one hundred and five dollars, as it has running water and some pieces of land fit for cultivation ; and having published the land for thirty consecutive days, there were no bidders to offer more than the
 187 appraisement, and thereupon the commissioner proceeded to inquire as to the three qualifications required, by which it appeared that the claimant had the means to settle and occupy the land. Wherefore the subscriber asks if you consider it advisable to order the three publications at this capital calling for bidders and to auction off the land to the one who offers the highest price, understanding that he will have to pay to the national treasury the whole value of the land, eighteen per cent. for forwarding, two per cent. for the general fund, and three dollars for the officials of the extinguished treasury department, giving him the necessary receipt of credit for the sum total, which must be joined to this expediente, and send report to the junta superior de hacienda publica, to be advised as to what it shall determine ; nevertheless you may do as you think best.

Arizpe, November 7th, 1821.

FRANCISCO PERES.

And this comisario general being satisfied with the foregoing petition, the three publications were made, which took place on the 8th, 9th and 10th days of November, 1821, the one sitio and three-fourths of another being solemnly auctioned off in favor of the denouncer, Don Leon Herreros. Immediately notice of the transfer being added to the original expediente, it was given to his agent who answered in writing that he was satisfied with the proceedings, that he should be allowed a settlement with the treasury, and that the corresponding title and confirmation should be issued to his principal. In virtue whereof the following order was issued :

In the city of Arizpe, on the 12th day of November of the year 1821, the honorable intendente *pro tempore* (interino) of this province of Sonora and Sinaloa, Don Ygnacio Bustamente, having examined these documents of the survey, appraisement, publication, auc-
 188 tion and sale of the lands of the place called San Jose de Sonoita, situated within the jurisdiction of the military post of Tubac, and containing one sitio and three-fourths of another sitio, for raising stock, in favor of Don Leon Herreros, of the same place, the answer given by the agent as appears by the foregoing instrument, with everything else that was necessary, said : that declaring, as I do declare, the said proceedings to be in good order

and form, and allowing, as I now allow, that settlement should be made with the national treasury for the said public lands by the said Don Leon Herreros; I should order that notice be given to his agent to proceed to deliver to the treasury of this city the sum of \$116.00. 2 r. 5 gr. in the following fashion: \$105.00 as value of said land; \$6 1 r. 7 gr. as land fee and its eighteen per cent., \$2 10 gr. for the two per cent. for the general fund, and three dollars as fees of the extinguished account of the same treasury; the certificate thereof being inserted in this expediente, the same shall be reported to the junta superior hacienda for its approbation; or to make such disposition as to them appears best, and by this instrument, be it so provided, ordered and signed with the assisting witnesses, in default of the regular clerk, which he has not, as he should by law.

YGNACIO DE BUSTAMENTE.

Assistants:

JOSE MA. MENDOZA.

JOAQUIN ELIAS GONZALES.

The agent being notified of this order, he proceeded to make the payment ordained, as appears by the certificate adjoined to the expediente, in which state it remains in the keeping of the general office (comisario general) as a perpetual record.

Wherefore, using the powers granted to me by the aforesaid article 81 of the royal ordinances of intendentes, and pursuant to 189 the provisions of the royal institute of October 15, 1754, which is quoted in the same article, by these presents, in the name of the sovereign nation of the Mexican Republic (Q. D. G.), I grant and confirm title to one sitio and three-fourths of another, which have been surveyed in favor of the said Don Leon Herreros, citizen of Tubac, in which district the land is situated, which by way of sale and as qualified by the provisions of the law, I grant, give and adjudicate, for himself, his sons, heirs and successors, with all its rights of ingress and egress, uses, customs, servitudes, woods, forests, grasses, waters, watering places for cattle and other appurtenances, with the precise condition that he shall occupy and cultivate said land to the utmost of his ability, without allowing it to be totally abandoned for one entire year, and should there be any other person asking to settle upon it, in such event, previous notice being given, it will be sold to the highest bidder; adding the further condition that Don Leon Herreros shall confine himself to his own limits and boundaries described in the proceedings of survey, which should be marked by monuments of stones and mortar; ordering, as I order, the constitutional alcaldes who are now or will hereafter be acting at the post of Tubac not to allow the said claimant or his successors to be molested or in any way disturbed in the free use, enjoyment and dominion of said land, but on the contrary they shall watch and see to it that they are always protected and maintained in the quiet and peaceful possession of it. In which terms I have ordered and I now order the present title of sale and confirmation in favor of Don Leon Herreros and his successors;

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

previous note of which being taken in the corresponding book, the original shall be delivered to the claimant for his protection and use as the legitimate proprietor, owner in fee, and only possessor of the said land.

Given in the city of El Fuerto on the 15th of May, 1825 ;
 190 authorized and signed with my hand and sealed with the
 seal of the comisario before witnesses, in default of secretary.
 JUAN MIGUEL RIESGO.

Assistants:

JOSE MA. MENDOZA.

ANTONIO APOLATEGUI.

Note of this title is taken on page 3 of Book No. 2 in this general comisaria.

(Endorsed :) Filed in the office of the clerk, court of private land claims, January 15, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

(Here follow photographs and map marked pp. 191, 192, and 193.)

194

PLAINTIFF'S EX. A.

I, Victor Aguilar, treasurer general of the State of Sonora, Republic of Mexico, certify that the book of itemized charges corresponding to the year 1821 does not exist in the archives in this office.

And at the request of the commissioner of the American Government, Mr. H. O. Flipper, I give this present certificate, in the city of Hermosillo, on the 12th day of March, eighteen hundred and ninety-four.

(Signed)

V. AGUILAR.

(Endorsed :) Filed in the office of the clerk, court of private land claims, March 21, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

195 And be it further remembered that thereafter, to wit, on the 30th day of March, 1894, being the 13th day of the December term, 1893, of said court, held at Tucson, Territory of Arizona, the court gave judgment as follows:

| | |
|--------------------------------------|-------------------------------|
| UNITED STATES | } No. 40. San Jose de Sonoyta |
| vs. | |
| SANTIAGO AINSA, Adm'r, etc., et als. | Grant. |

This cause having been submitted to and taken under advisement by the court on the 22nd day of March, A. D. 1894, the court, after due deliberation, hereby orders, adjudges, and decrees that the claims of the various defendants as set forth in their answers on file herein for a confirmation of the lands described therein are hereby disallowed and rejected.

* * * * *
 (Minutes signed)

* * * * *
 JOSEPH R. REED,
 Chief Justice.

The opinion of the court delivered and filed in said case is in the words and figures following, to wit:

In the Court of Private Land Claims.

THE UNITED STATES

vs.

SANTIAGO AINSA, Adm'r, &c., et al. }

Opinion of the Court.

On the 29th day of May, 1821, Leon Herreras presented his petition to the intendente of the provinces Sonora and Sinaloa, asking to obtain title to two sitios of land at the place known as Sonota. The intendente referred the petition to the commander at Tubac, directing him to cause the tract to be surveyed, appraised, and the proposed sale thereof to be advertised for thirty days.

196 In obedience to this order the officer proceeded to make a survey of the tract, which was made on the 26th and 27th days of June, 1821, and on the completion of the survey he caused it to be appraised, the appraised value being one hundred and five dollars. Thereupon the proposed sale was advertised for thirty consecutive days by proclamation made by a crier appointed for that purpose, beginning on June 29th and ending on the 28th day of July, 1821. Thereupon, on the 31st day of July, 1821, the officer took the testimony of three witnesses to the effect that Herreros had property and means to occupy the tract. On October 20th, 1821, the proceedings above mentioned, being reduced to writing, were by the officer returned to the intendente.

On October 25th, 1821, the intendente referred the proceedings to the promoter fiscal for his examination.

On November 7th, 1821, the promoter fiscal reported to the intendente the regularity of the proceedings and recommending that the land be offered for sale at three public auctions, and thereupon the auctions were ordered to be held.

The first auction was held on November 8th, 1821, the second on November 9th, and the third on November 10th, 1821.

At the conclusion of the third auction the land was struck off to Herreros at the appraised value by the board of auction, of which board the intendente was a member and the president.

All these proceedings being concluded, on the 12th day of November, 1821, Herreros paid to the officers of the treasury the amount of the appraisement, together with the fees and charges required to be paid, and with his concurrence the intendente and the auction board ordered the expediente of the proceedings to be reported to the junta superior de hacienda for its approbation, so that when approved the title might issue.

197 There is no evidence that the sale was approved by the junta superior de hacienda.

On the 15th day of May, 1825, Juan Miguel Riesgo, commissary general of the treasury, public credit, and war of the Republic of Mexico for the State of the West, issued a title in the usual form

purporting to convey the land to Herreros in pursuance of the proceedings above referred to and professing to act under the authority of the ordinance of the intendentes of Spain of the year 1786.

The question is, did these proceedings, including the grant document issued by Riesgo, convey any title, legal or equitable, to Herreros?

The intendente was an officer originally appointed under the Crown of Spain in pursuance of the ordinance of the intendentes of December 4, 1786. Under this ordinance the intendente was authorized to make sales of the public lands with the advice of the promoter fiscal, but all proceedings of a sale were required to be reported to the junta superior de hacienda for its approbation before issuing the title. By a royal cedula of March 23, 1798, the provisions of the ordinance of 1786 were so modified that in cases where the value of the land was less than two hundred dollars it should not be necessary that the sale be approved by the junta superior if the purchaser would pay an additional tax of two per cent. of the value of the land.

It may be mentioned in this connection that a tax of two per cent. for the general fund was charged and paid, as appears by the proceedings in this case.

On the first day of March, 1821, there was adopted in Mexico the plan of Iguala, which was a declaration of the independence of Mexico from the Crown of Spain, and containing the basis for an independent government of Mexico. A war for independence
198 was carried on in Mexico from that time until the army of the Crown capitulated and surrendered the capital, on the 27th day of September, 1821, and soon thereafter returned to Spain.

On September 28th, 1821, a provisional government was instituted and organized, consisting of a legislative junta and an executive regency, and on the same day an act was passed declaring Mexico to be a free and independent nation, and since that time Spain has asserted no sovereignty over the territory of Mexico.

It will be seen from this review that the proceedings to obtain title involved in this case were begun subsequent to the adoption of the plan of Iguala. This, as we have said, was a declaration of the independence of Mexico from the rule of Spain. It was the basis and the compact on which the war for independence was from that time carried on. It was made successful by arms, and its success was acknowledged by the surrender of the capital on September 27th, 1821.

It is conceded that when one government is succeeded by another distinct and independent government in the sovereignty of a territory the laws of the former government which regulate the conduct of the inhabitants with each other and for the protection of life and property continue in force after the change until repealed or superseded by laws enacted by the new government. It is also conceded that those laws of the former government which have for their object a certain governmental public policy, of which character are laws for the disposition of the public domain, cease to have any force or effect after the sovereignty of the former government ceases.

The only question in such case is, at what time may the sovereignty of such former government be said to have ceased?

The cases of *Harcourt vs. Gaillard*, 12 Wheaton, 523; 199 *Leese vs. Clerke*, 3d California, 17, and Board of Land Commissioners *vs. Bell*, Dallam's Texas Decisions, 366, seem to authorize the conclusion that such sovereignty ceased on the adoption of the original declaration of independence, and such is our view of the question.

But whether this view be correct or not, there can be no reasonable question in this case that Spanish sovereignty ceased in the territory of Mexico on or before the 28th day of September, 1821, when the institution and organization of an independent government of Mexico became an accomplished fact.

As before stated, the proceedings which resulted in the sale of the land set up in this case had their inception on May 29th, 1821, and subsequent to the adoption of the declaration of Mexican independence by the plan of Iguala, and at a time when the war for independence was in full progress upon its successful career. This war was not waged for a mere change in the person-el of the executive nor merely for a change in the form of the government, but was begun and carried to a successful issue for the purpose of instituting a new and rival government and to deprive the government of Spain, under whatever form or under whatever ruler, of all authority in Mexico, and to deprive it of the sovereignty and ownership of the soil which it had theretofore maintained. This view brings the case within the principle of *Harcourt vs. Gaillard*, 12th Wheaton, 523, which is that the declaration of independence was an assertion of title to the soil which was made good by resort to arms. The war for independence is likened to a suit for the title to the soil prosecuted by the sword, and it is said by the court, in the course of the opinion, that grants of the soil made *flagrante bello* by the party which fails can only derive validity from treaty stipulations. This is a familiar principle of law applicable to the contests of private persons as to the ownership of land applied 200 to the more stupendous controversies of nations of the same character.

On this assumption it is apparent that until there was legislation on the subject by the Mexican government there was no law in force subsequent to March 1st, 1821, authorizing the sale of any part of the public domain within the Mexican territory.

This proposition is, we think, clearly sustained by the decision of the Supreme Court in *United States vs. Vallejo*, 1 Black., 541, where it is held that a law of Spain for the disposition of the public domain could not have been in force in Mexico after the change of government unless expressly recognized by Mexican legislation.

But assuming that the change of government as it is expressed in the Vallejo case did not take place until the organization of the new government on September 28th, 1821, the sovereignty of Spain continuing until that time, and the proceedings for this title having had their inception prior to the change, what is the effect upon this title? Did the proceedings had up to September 28th, 1821, have

the effect to vest in Herreros any legal or equitable interest in the land such as would authorize the officers of the Mexican government to complete the proceedings and sell and convey the land to him without further legislation by the Mexican government?

The ordinance of the intendentes of 1786, as modified by the cedula of 1798, authorized the intendente to sell the land absolutely with the advice of the promotor fiscal and the collection of the two per cent tax.

The measurement and appraisalment of the property did not bind him to accept the amount of valuation. The thirty days' proclamation of notice of sale nor the three auctions do not appear to

201 have been required by any law, but only had the sanction of a practice usual in such cases. The intendente had full power over the matter of the amount of land to be sold and the price for which it should be sold. Until the intendente acted and officially sanctioned the sale the proposed purchaser had no interest in the property. It was the sale, and the sale only, which conferred an interest; all other matters were mere preliminary to enable the intendente to form a judgment as to the propriety of the sale.

As before stated, the action of the intendente in making the sale, in so far as he did make it, did not take place until December 10th, 1821.

As we have endeavored to show, the laws of Spain authorizing disposition of the public domain in Mexico ceased of effect on September 28th, 1821, at the very latest. The government of Mexico made no law authorizing disposition of the public domain until January 4th, 1823. Therefore, at the time the intendente acted in the way of making the sale and at the time the money in payment therefor was accepted, there was no law in force authorizing any officer to sell any part of the public domain of Mexico for any purpose.

On October 5th, 1821, a law was enacted by the Mexican government as follows:

"The sovereign provincial council of government of the Empire of Mexico, considering that from the moment it solemnly declared its independence from Spain all authority for the administration of justice and other public functions should emanate from said empire, has seen fit to habilitate and confirm all authorities as they now are, in conformity with the plan of Iguala and the treaty of the village of Cordoba for the purpose of legalizing the exercise of their respective functions."

202 This decree by its terms had reference to the incumbents of the various offices under the empire. It cannot by construction be extended beyond its plain application. By its terms the persons then holding the several offices were continued in office for the administration of the laws of the empire. It did not provide that all the laws of Spain as they existed at the time of the adoption of the plan of Iguala were continued in force as the laws of Mexico. It left the authorities mentioned authorized to administer the laws which remained in force.

We have seen that the laws for the protection of life and prop-

erty and which regulated the conduct of the inhabitants toward each other remained in force as they had theretofore existed, but that laws such as those for disposition of the public domain did not remain in force after the change of government. So that, while this law of October 5, 1821, may have continued in office the intendentes and boards of the treasury for some purposes, it did not authorize them to in any way dispose of the public domain.

We are therefore of the opinion that the whole of the proceedings set forth in the expediente of this sale were without the authority of and were not binding upon the Mexican nation.

However, on May 15th, 1825, Juan Miguel Riesgo, acting in the capacity of commissary general of the treasury, public credit, and war of the State of the West, executed and delivered to Herreros a final title for the land in question, based upon the proceedings set forth in the expediente of the title hereinbefore referred to, and professing to act under the authority of article 81 of the ordinance of the intendentes of 1786, and it is contended by the claimants in this case that this document issued by Griesgo conveyed the fee of the property to Herreros. It therefore becomes necessary to

203 determine this question. The contention of the claimant is that, inasmuch as Riesgo was commissary general of the treasury for the State of the West and assumed to be authorized to make the grant by exercising such authority and making the grant, the court is required to presume that he was in fact authorized to make the grant in the way in which he did make it.

The office of commissary general of the treasury, public credit, and war of the State of the West was created by a decree of the congress of the Mexican Republic of the 21st day of September, 1824.

The 3rd section of the decree provided that these commissaries should be superior chiefs of all branches of the exchequer.

The 4th section defined their duties, which were to collect and disburse, under the laws and orders of the government, the proceeds from the revenues and the contingents of the States.

The 5th section provided that certain of the revenues should be administered directly by the commissary, and that certain of them should continue under the special administration theretofore in vogue, but subordinate in all respects to the commissary. These revenues, which were to be administered directly by the commissary, were those on powder, salt deposits, the proceeds from the revenue on tobacco that belonged to the federation, national properties and lands, contingents, customs, tolls, and all branches pertaining to public credit. The Spanish word used in this section, which is translated "lands," is never used to mean vacant public lands. The word is "cascas," the primary meaning of which is a shell or a hull.

Sections 4 and 5 of the decree must be construed together, and when so construed they clearly show that the duties of this officer were the collection and disbursement of certain of the public revenues, and that no authority was conferred upon him to provide the means for raising that revenue by selling and conveying the public domain, and especially they show that no

authority was conferred upon him to examine into the validity of sales of the public domain made by the discontinued intendentes, and to validate and confirm them by issuing final titles thereon to the purchaser. There is no reason to say there was any other legislation conferring such authority upon the commissary. If there was it is a matter of public record and easily obtainable. The fact is that Riesgo himself did not pretend that he was authorized to issue this title by any law issued by the Mexican government, but claimed to derive such authority from the ordinance of the intendentes of 1786. With this decree before us creating the office of commissary general of the treasury and specifying his authority and duties, there is no room for indulging presumptions as to what his authority was, and we are brought clearly within the rule of *Cambuston's case*, 20 Howard, 59, where it is decided that in such case no such presumption is allowable. We cannot justify ourselves in indulging in a course of reasoning on this subject; the question has been decided by the Supreme Court and is settled.

It results that, in our opinion, the entire proceedings set forth in the expediente of this title and the final title issued thereon were without warrant of law and invalid.

This conclusion is concurred in by the chief justice and Associate Justice Murray.

Associate Justices Stone and Fuller dissent.

(Signed)

H. C. SLUSS,
Associate Justice.

(Endorsed :) Filed in the office of the clerk, court of private land claims, March 30, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

205

Stipulation.

United States Court of Private Land Claims.

| | |
|---|--------------------------------------|
| UNITED STATES OF AMERICA, Plaintiff, | } No. 40. San Jose de Sonoita Grant. |
| <i>vs.</i> | |
| SANTIAGO AINSA, Administrator, <i>et al.</i> , Defendants. | |

It is hereby stipulated that defendant Santiago Ainsa, as administrator of Frank Ely, deceased, upon the trial of the above-entitled cause, by proper deraignment of title connected himself in interest as such administrator with the original grantee under the San Jose de Sonoita grant, and it is further stipulated that the deeds and conveyances by which he deraigned title need not be copied in the transcript.

MATT. G. REYNOLDS,
U. S. Attorney.
ROCHESTER FORD,
Attorney for Defendant Ainsa.

(Endorsed :) Filed June 29, 1894. James H. Reeder, clerk, by R. L. Long, deputy.

[Endorsed:] No. 40. (F. No. 23.) Stipulation. Filed in the office of the clerk, court of private land claims, June 29, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

206 And be it further remembered that thereafter, to wit, on the 5th day of September, A. D. 1894, a petition, an order, and a citation were filed in the office of the clerk; which petition, order, and citation are as follows:

In the United States Court of Private Land Claims.

UNITED STATES OF AMERICA, Plaintiff and
Respondent,

vs.

SANTIAGO AINSA, Administrator of the Estate of Frank Ely, Deceased, Defendant and Appellant; Rollin R. Richardson, Don A. Sanford, C. C. Watkins, Defendants.

Case No. 40. San Jose de Sonoita Grant.

The above-named defendant, Santiago Ainsa, administrator of the estate of Frank Ely, deceased, conceiving himself aggrieved by the order and judgment entered on March 30, 1894, in the above-entitled cause, prays that an order of severance be entered herein, and that he be allowed to appeal separately and doth hereby appeal from said order and judgment to the Supreme Court of the United States, and prays that this his appeal may be allowed, returnable sixty days from the date thereof, and that a transcript of the record and proceedings and papers upon which said order and judgment were made, duly authenticated, may be sent to the Supreme Court of the United States.

ROCHESTER FORD,

*Attorney for Santiago Ainsa, Administrator,
Defendant and Appellant.*

Tucson, Arizona Territory, August 16, 1894.

And now, to wit, on August 22, 1894, it is ordered that the appeal be allowed as prayed for.

JOSEPH R. REED,

Chief Justice Court of Private Land Claims.

Due and legal service of copy of the foregoing application for an appeal and allowance thereof is hereby acknowledged, at Santa Fé, New Mexico, this 27th day of August, A. D. 1894.

MATT. G. REYNOLDS,

United States Attorney, Court of Private Land Claims.

Filed in the office of the clerk, court of private land claims, Sept'r 5, 1894.

JAS. H. REEDER, *Clerk,*

By R. L. LONG, *Deputy.*

[Endorsed:] Case No. 40. In the court of private land claims. United States of America, plaintiff, *vs.* Santiago Ainsa, adm'r, etc.,

et als., defendants. San Jose de Sonoita grant. Allowance of appeal. Rochester Ford, att'y for Ainsa, adm'r.

207 In the United States Court of Private Land Claims.

| | |
|---|--|
| SANTIAGO AINSA, Administrator of the Estate of Frank Ely, Deceased, Defendant and Appellant, | } Case No. 40. San Jose de Sonoita Grant. |
| vs. THE UNITED STATES, Plaintiff and Respondent. | |

UNITED STATES OF AMERICA, ss:

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, sixty days from and after the date of this citation, pursuant to an appeal filed in the office of the clerk of the court of private land claims, district of Arizona, wherein Santiago Ainsa, administrator of the estate of Frank Ely, deceased, is appellant and The United States of America are respondent, to show cause, if any there be, why the judgment rendered against the said appellant in the said appeal mentioned should not be corrected and why speedy justice should not be done to the parties on that behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this 22d day of August, A. D. 1894.

JOSEPH R. REED,
Chief Justice Court of Private Land Claims.

Due and legal service of the foregoing citation is hereby acknowledged this 27th day of August, A. D. 1894.

MATT. G. REYNOLDS,
United States Attorney, Court of Private Land Claims.

(Endorsed:) Filed in the office of the clerk, court of private land claims, Sept'r 5, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

208 *Certificate of Clerk.*

UNITED STATES OF AMERICA, } ss:
Territory of Arizona,

I, James H. Reeder, clerk of the court of private land claims, do hereby certify that the foregoing contains a full, true, and correct transcript of all the records, papers, and proceedings had and used in the trial of the cause entitled "United States against Santiago Ainsa, administrator, *ect., et als.*, No. 40 (San Jose de Sonoita grant)," as the same appears in the records of my office.

Given under my hand and the seal of said court, this 3rd day of October, A. D. 1894, at Tucson, Arizona Territory.

[Seal Court of Private Land Claims, Tucson, Arizona.]

JAMES H. REEDER, *Clerk,*
By R. L. LONG, *Deputy Clerk.*

132 SANTIAGO AINSA, ADM'R, ETC, VS. THE UNITED STATES.

209 In the Supreme Court of the United States, October Term, 1896.

SANTIAGO AINSA, Administrator, *et al.*, Appellants, }
vs. } # 181.
THE UNITED STATES.

It is hereby stipulated that nine (9) blue-print photographic exhibits, A to H and one not marked, may be omitted from the printed record in this case, and that this stipulation may be printed and taken as and for a part of the record herein.

ROCHESTER FORD,

Attorney for Appellants.

MATT. G. REYNOLDS,

Attorneys for the U. S.

210 [Endorsed:] Case No. 15,708. Supreme Court U. S., October term, 1896. Term No., 181. Santiago Ainsa, adm'r, app't, vs. The United States. Stipulation to omit photographs from printed record. Filed Aug. 8, 1896.

Endorsed on cover: Case No. 15,708. Court of private land claims. Term No., 181. Santiago Ainsa, administrator of the estate of Frank Ely, deceased, appellant, vs. The United States. Filed October 16th, 1894.

Supreme Court of the United States.

OCTOBER TERM, 1896.

No. 181.

SANTIAGO AINSA, ADM'R, ETC., APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE
LAND CLAIMS.

**STATEMENT OF THE CASE, SPECIFICATION
OF ERRORS, BRIEF AND ARGU-
MENT OF APPELLANT.**

STATEMENT OF THE CASE.

This case was instituted in the Court of Private Land Claims by the filing on the part of the United States under the 8th section of the act of March 3, 1891, of the petition set out on pages 1-3 of the record. This petition alleged that defendant Ainsa, as administrator, claimed to be the owner through certain mesne conveyances of a tract of land in the Territory of Arizona known as the "Rancho de San José de Sonoita;" that such claim was by virtue of a grant made by officers of the Republic of Mexico claimed to be authorized by the laws

and usages of that republic to do so, and that such lands are in the territory acquired from Mexico by what is known as the Gadsen Purchase; that said defendant claimed that by said grant he acquired a fee-simple title to the lands so granted, and that his title was complete and perfect at the date when the United States acquired sovereignty over such lands; that said defendant has not voluntarily come into the Court of Private Land Claims under the provisions of the act establishing said court; that neither said defendant nor his intestate or any grantor now is or had ever been in possession of the lands so claimed; that said lands had never been designated by occupation or segregated from other lands; that the boundaries of said lands are open to question, and that the location, extent and boundaries of the lands are uncertain and indefinite; that said grant is invalid and void because same was not made according to the law then in force, or by any authorized officers or persons; that at the date when the United States acquired sovereignty over the territory which embraces said lands, they were not located, nor were the title papers recorded in the archives of Mexico; that certain portions of the lands so claimed had been patented by the United States to defendants Richardson, Watkins and Fleming, and that all of said lands so patented are within the said claimed limits of the lands claimed by defendant Ainsa. The petition prayed that defendant Ainsa be served with notice and be ruled to answer the petition, and ruled to produce the title papers upon which he based his claim to said Rancho San José de Sonoita, and to file a copy of the same with his answer and to produce and file a map of the lands claimed by him; that the other defendants answer the petition and disclose their muniments of title; that the title to said lands be settled and adjudicated, and if the title be adjudged to be valid that the extent and boundaries thereof be then settled and adjudicated, excepting any part of such lands

that shall be found to have been disposed of by the United States, and if the title to said lands be found invalid, that the court so decree.

Defendant Ainsa in his answer and amended answer (rec. pp. 6-9) alleged that he was the owner in fee, holds and possesses the lands covered by said land grant under and by virtue of a certain instrument in writing now and hereafter designated as and being a grant title, bearing date May 15, 1825, made and executed by Juan Miguel Riesgo, commissary general of the treasury, public credit and war of the State of the Occident, in the name of the sovereign nation of the Mexican Republic, under and by virtue of article 81 of the royal ordinances of intendentes of December 4, 1786, and pursuant to the provisions of the royal institute of October 15, 1754, which is quoted in the same article, and under and by virtue of the other laws governing said action.

That under and by order of such laws such proceedings were thereunder lawfully and regularly had as that the said commissary general of the treasury, public credit and war of the State of the Occident, in the name of the sovereign nation of the Mexican Republic, duly and regularly and for a good and valuable consideration, to wit, the sum of one hundred and sixteen dollars, two reales and five grains, and for other good and valuable considerations in said grant title set forth and described, did, on said May 15, 1825, sell and convey in fee to one Don Leon Herreros the land hereinbefore mentioned and more particularly described, commonly known as and called the San José de Sonoita grant or private land claim. That the said grant or private land claim was instituted by a petition of said Don Leon Herreros to Brigadier General Cordero, governor and intendente of the provinces of Sonora and Sinaloa, praying for two sitios of land, more or less, in a place known as Sonoita, in the jurisdiction of the presidio of Tubac, and that proceedings of survey,

valuation and publication were taken on this petition as required by law and as set out in the said title papers, and on May 15, 1825, the tract as surveyed, according to the natural landmarks and boundaries set out in said proceedings of survey, was sold to said Don Leon Herreros for the sum of one hundred and sixteen dollars, two reales and five grains, which amount was thereupon paid by said grantee; and that thereupon, on said May 15, 1825, there was issued to the grantee the testimonio or titulo of said grant, duly recorded in the archives of Mexico, to wit, on page 2 of the proper book in the office of said commissary general.

The date of the sale of the land is incorrectly stated in this answer as May 15, 1825. This is the date when the final and formal title paper in fee was executed by the commissary general of the treasury, public credit and war of the State of the Occident, who was the highest official of the general Mexican government in the State of the Occident, but the land had been sold and paid for on November 12, 1821. The extension of title on May 15, 1825, was by virtue of the sale of the land and the payment made by the purchaser November 12, 1821.

The answer further alleged that the map executed by George J. Roskruge, Esq., and filed with the answer, is a correct map of the said land grant, and correctly represents the boundaries of said grant and the lands embraced therein, and that said grant comprises 12,147.69 acres, as shown by said map; that under the provisions of the act of July 22, 1854, a petition had been filed with the United States Surveyor General of Arizona, praying for the confirmation of said grant, accompanying which petition were the original title papers of said grant; that thereupon the said United States Surveyor General caused said grant to be investigated by one R. C. Hopkins, a duly authorized and competent agent of the United States, and the said United States Surveyor General, in his official report,

under date of January 14, 1880, to Congress on said grant stated that said special agent Hopkins reported that the expediente of said grant had been found in its proper place in the archives of Mexico; that said expediente was written on the corresponding stamped paper; that the proceedings of survey, valuation, publication and sale were all regular; that the signatures to the title papers were genuine, and that there was nothing to cast suspicion on the *bona fide* character of the original title papers, and said United States Surveyor General reported said grant as a valid one and recommended its confirmation to the extent of one and three quarter square leagues, as measured by the original grantee, and no more.

Defendant further averred that all of the steps and proceedings in the matter of the grant and sale of said lands were regular, complete and lawful, and vested a perfect title in fee thereto in the grantee of said grant, and that said grantee at the time went into the actual possession, use, and occupation of said grant and erected the proper monuments thereon, and that said grantee and his descendants and legal representatives have continued ever since and until the present time in the actual possession, use and occupation of the same and are now seized and possessed in fee thereof; that said grant documents constitute a complete and definite grant in fee by way of sale, coupled with the condition subsequent not to abandon the same for a longer period than three years without good reason, which would subject the tract to adjudication to third parties who might apply for or denounce the same; that no forfeiture of said grant was ever claimed, and that this defendant is entitled to a confirmation of said grant in accordance with the metes and bounds and natural landmarks established by the said survey thereof, and that it vested in the grantee a perfect and valid title in fee to the whole of said tract so surveyed.

The court held that the burden of proof was on the grant claimant, and defendant Ainsa introduced as a witness R. C. Hopkins, who testified that he was in his 78th year; that from 1855 till 1886 he was in the service of the U. S. government in connection with Spanish land grants in California and Arizona; that in 1879 he was sent to Mexico as a special agent of the Interior Department to examine the records in the State of Sonora, at Hermosillo and Urez; that he examined in the archives of Sonora the signatures of officials to grants that he supposed were in the Territory of Arizona, the portion ceded to the United States; that he spent two or three or four months in the archives, and made the search with considerable care; that in 1880 he was employed by the United States in the office of the Surveyor General for Arizona.

Witness was shown the paper purporting to be the title paper of the San José de Sonoita grant, and testified that he had seen it in the Surveyor General's office of Arizona; that he had seen in the archives a great many signatures of the persons whose signatures were on said title papers, and that the signatures of Riesgo and Mendoza were, in his opinion, genuine. Said title paper and translation were then offered in evidence. Witness further testified that he saw in Hermosillo, in 1879, the matrix of the grant, and examined it sufficiently to see its character, and that his recollection was that it was written on properly stamped paper and that the signatures to it were genuine.

A certified copy of the expediente from the archives of Mexico and a translation of same were offered in evidence. There were also offered in evidence the original deed from Herreros, the grantee, to Juan Elias, following a copy of the testimonio, dated December 26, 1831, and other deeds and records showing title in defendant Ainsa, and it was stipulated (rec. p. 129) that said defendant had by proper deraignment connected himself in interest with

the original grantee of said grant, and that the deeds and conveyances by which he deraigned title need not be copied in the transcript.

Witness Hopkins on cross examination testified that the book of Toma de Razon at Hermosillo does not go back as far as 1825, and gave testimony as to the way title papers of grants were made. On re-direct examination he testified that the report which he made was from data taken in Hermosillo with the papers before him.

Santiago Ainsa, defendant, testified that he is an attorney at law, a Mexican by birth, knew the Spanish language, had examined 15 or 20 times in Sonora, in the capital, the Mexican archives of titles to lands in the present Territory of Arizona issued by the preceding government.

Witness was handed the paper purporting to be the titulo of the San Jose' de Sonoita grant, and testified that it was placed in his hands in 1879 or 1880 by the then owner, Mr. Alsua; that witness examined it thoroughly, translated it and presented it to the Surveyor General of Arizona; that he had examined in the archives of the treasurer general of the State of Sonora, for the purpose of ascertaining the validity of grants in Arizona; very many grants bearing the signatures of Riesgo and Mendoza, and that the signatures of those officials to the title papers shown him he believed to be genuine; that he had seen in the city of Hermosillo the matrix of the Sonoita grant, and that he was sure such matrix was genuine, as far as human nature can be certain of anything.

On cross examination he testified as to the manner of making grants, and on re-direct examination stated that neither he nor the keeper of the archives at Hermosillo had ever been able to find any book of Toma de Razon containing entries of grants prior to October 24, 1831.

The expediente or matrix of the grant offered in evidence (rec. pp. 90-108) shows that on or a few days

before May 29, 1821, one Leon Herreros, resident of the military post of Tubac, represented to the intendent governor that to the east of said post, about eight leagues, more or less, from it, was situated a place known as Sonoita, which had been anciently an Indian town and was then abandoned because of the incursions of the Apaches. In this place Herreros registered two sitios of land, and asked the intendent "to order the same to be surveyed, and to institute all the other proceedings necessary to obtain title to same."

At Arizpe, on May 29, 1821, the intendent, Cordero, granted the petition without prejudice to third persons who might have a better right, and ordered the commander at Tubac to "proceed to the surveying of the lands registered by the petitioner, summoning adjacent owners; he will appoint experts to appraise the land at its just value, which he will publish for thirty consecutive days, asking bidders, and execute all the proceedings required by law" (rec. p. 91).

At Tubac on June 22, 1821, Gonzales, the commander of the military post of Tubac, ordered that the decree of the intendent Cordero be carried into effect, and states that "for that purpose the interested party being notified as well as the adjacent owners, if there be any, and accompanied by the necessary officials, I will proceed to the ancient, abandoned place of Sonoita, in order to survey the two sitios denounced."

On the same day Herreros was notified of the foregoing order, and at the same place of Tubac, on the same day, the commander "in order to proceed to the survey of the land claimed and to appoint the officers necessary, did so."

As to the inspection, survey and appraisalment of the land, the expediente is as follows. The words two sitios, "a little more or less," appear in the original (rec. p. 111,

15th line from bottom), but were omitted by some oversight of the translator:

“On the 25th day of the month of June, 1821, being at the old, deserted place of Sonoita, accompanied by the interested party, the appointed officers and assisting witnesses, I ordered before anything else that a general reconnoissance be made of the place claimed, examining it very carefully on both sides, and after it was carefully viewed, I found it to be a place where there are some old standing walls which show by the ruins that it was anciently inhabited, and at a distance from these ruins towards the northeast something like half a league off there is a spring that runs in a ravine towards the south having various turns, ending by emptying westwardly into the river that leads to this military post. though dry, as the water disappears at a distance of two leagues, more or less, before it joins it in the neighborhood of Calabasas. In the said canon there are several small strips of arable land, and on one side of this canon and on the other there appear nothing else than continuous mountains and hills; and just now the claimant has some pieces of land under cultivation, occupying said lands and keeping sheep and swine.

In the ancient abandoned place of San José de Sonoita, on the 26th day of the month of June, 1821, I, the said lieutenant commander and sub-delegate of the military post and company of Tubac and its jurisdiction, in order to make the survey of the land denounced by Don Leon Herreros of this vicinity, delivered to the appointed officials a well twisted and stretched cord, and in my presence was delivered to them a castilian vara, on which cord were measured and counted fifty regulation varas, and this being done, at each end were tied poles, and standing on the spot assigned by the claimant as the center, which was in the very walls of the already mentioned Sonoita, there were measured in a northeasterly direction sixty-three cords, which ended at the foot of some low hills, a little ahead of a spring—a chain of mountains of a valley which goes on and turns to the east, where was placed a heap of stones as a monument; and being about to return to the center, the claimant expressed

a desire that the survey should be continued down the canon until the two sitios, a little more or less, should be completed, that on each side we should survey to him only twenty-five cords, because if the survey should extend further, by reason of the broken-up condition of the country and the rocky hills in sight, such land would be useless to him, saying, at the same time, that, continuing the measurement along the cañon (because it was impossible to go in any other direction on account of the roughness of the ground), by reason of the many turns that had to be made, so many cords should be deducted from the total number measured as would be calculated to result in excess of the real length measured, taken on a straight line, and considering his demand reasonable I ordered the continuation of the survey as follows, to wit:

From the place where the monument was placed there was measured to the southeast twenty-five cords, which going up the valley ended on the left side of a chain of hills, and at the foot of one of them, whose slope was covered with oak trees; and on the top was placed a heap of stones as a monument; and on the opposite side there was estimated also twenty-five cords, ending on a high white hill covered with grass, distinguished by this reason from the others near it, which are part of the Santa Rita mountains, and on the top I ordered a heap of stones to be placed as a monument. In this way the measurement was finished at this end of the survey, with its proper corners and heads. Turning to the center the cord was measured in the direction of the east, and there were measured and counted twenty-five cords, ending before reaching a high mountain located on this side, on a somewhat high hill, covered with many oak trees, where I ordered a heap of stones in sign of a monument. Returning to the center the cord was laid towards the west and twenty-five cords were measured, ending on the main road to Tubac, on a little hill called the "casadero," on which was placed a heap of stones as a monument. Whereupon the survey was suspended, as it was late, to continue it to-morrow morning.

In the aforesaid place of Sonoita, on the 27th day of the said month and year, I, the said lieutenant commander, in order to continue the survey suspended yesterday,

accompanied by the officers appointed, taking as starting point the place designated as the center, the cord was extended toward the south all along down the cañon, by which there were measured and counted three hundred and twelve cords, that ended in the same cañon upon going down a hill, on the main road, at a place called the first ford, with the direction looking towards the west, on account of the turn which the said cañon had made, and there was put a heap of stones as a monument, and as heads or corners there were estimated on the side twenty-five cords, to the other side of a ledge that ends in high rolling boulders in which a hill that forms a little valley, where I ordered to be placed a heap of stones as a monument. And on the left side there were estimated by the surveyors twenty-five cords to the first of two hills, almost exactly alike, one to the other, which are named the twins, which serves as a monument, as these are distinguished from all the other hills which surround them, and on the summit I ordered to be placed a cross. This end of the survey is about two leagues, more or less, from the Calabasas ranch at the nearest place, and on the other end only adjoins with places frequented by the enemies as they come to rob and invade the country. And in view of the suggestion made by the claimant, to reduce number of cords actually measured so much as might be calculated to be in fact in excess of the true measurement by reason of the many turns of the cañon over which the survey was made, as it could not be carried on straight, I appointed for that pupose Lieutenant Don Manuel Leon and the citizen Don Jose Ma. Sotello, who were unanimously of the opinion to deduct twenty-five cords out of the three hundred and twelve measured down the cañon, the claimant consenting thereto as just; the survey was calculated to be two hundred and eighty (seven) cords, with which this survey was finished, resulting from it one sitio and three-fourths of another sitio, registered by Don Leon Herreros for raising stock and for farming purposes; being put in possession and he being satisfied with the said survey, he was admonished that he should at the proper time designate his boundaries with monuments of stone and mortar, as is provided.

Forthwith I, the same lieutenant commander, for the

purpose of appraising and valuing the surveyed land in favor of Don Leon Herreros, of this place, ordered that there should be appointed as appraisers and I appointed as such appraisers Don Manuel de Leon and the neighbor Don Jose Ma. Sotelo officers as tallymen and surveyor of the said land which they had examined and gone over in detail, who being present I made known to them the said appointment, which they accepted, and each was sworn in the form that corresponds to each to discharge properly and faithfully this duty, without deceit, fraud or any subterfuge. In virtue thereof they said that according to and because of the examination they had made and being aware of the existing regulations on the subject, the price should be fixed at, and they fixed it at, sixty dollars for each sitio, because they have running water and several banks of arable land which can be made use of by cultivation."

On June 28, 1821, an order was made by Gonzales that the land should be put up at auction for 30 consecutive days, which was done from June 29 to July 28, inclusive. The same announcement was made at each auction as follows: "The lands of the place of San Jose' de Sonoita, situate in this jurisdiction, and comprising one sito and three quarters of another for raising cattle, surveyed in favor of Don Leon Herreros, of this place, and appraised in the sum of one hundred and five dollars, at the rate of sixty dollars per sitio, are offered for sale for royal account," etc.

On July 28, 1821, the subdelegate, Gonzales, ordered that "inasmuch as these surveys, appraisements and auctions have been concluded," the testimony of three witnesses should be taken as to the capacity of the applicant to stock the lands, and three witnesses were asked "if the said Herreros had means and property to occupy and possess the one and three quarter sitios which had been surveyed to him in the place of Sonoita," and they testified that he had.

The proceedings were then forwarded to the governor intendent, who, on October 25, 1821, referred them to the promotor fiscal (attorney general), of the public treasury. The attorney general reported, November 7, 1825, that he had "examined carefully the expediente of the lands surveyed in favor of Don Leon Herreros * * from which there resulted one sitio and three quarters of another, for raising stock and horses, valued at sixty dollars each sitio," and recommended that the final sale of the land be made at the capital, and this was done on November 8, 9 and 10. The announcement at these sales was "There is to be auctioned at this board of auctions one sitio and three fourths of another of public lands, for raising cattle, comprised in the place of San José de Sonoita, in the jurisdiction of the military post of Tubac, surveyed in favor of Don Leon Herreros, resident of the same, and appraised in the sum of \$105," and at the final sale the expediente states that "this proceeding was concluded, there being solemnly sold the said one sitio and three quarters of another, which compose the public land surveyed, referred to in this expediente." Herreros was then ordered to pay into the national treasury the purchase price of said land and the customary charges. This he did, as appears by the receipt of the principal officers of the national treasury (rec. p. 107). At the end of this expediente or matrix, which is retained by the Mexican government and is now on file in the archives at Hermosillo, appears the note that "On May 15, 1825, title was issued on this expediente." This title is the titulo, the original and translation of which were offered in evidence and appear on pages 109-123 of the record. It differs from the expediente only in condensing and giving by way of recital some of the proceedings, such as the auctions, testimony of witnesses and final sales which are given in full in the matrix, and it contains, in addition to the matrix, the heading and the granting

clause. The heading, written May 15, 1825, is as follows: "Titulo of the sale and confirmation of one sitio and three fourths of another, surveyed in favor of Don Leon Herreros, resident of Tubac, situated in a place called San José de Sonoita." The titulo was issued at the city of Fuerte on the last mentioned date, May 15, 1825, by Juan Miguel Riesgo, commissary general, and recites that that officer granted and confirmed title "to one sitio and three fourths of another, which have been surveyed in favor of the said Don Leon Herreros, * * * adding the further condition that Don Leon Herreros shall confine himself to his own limits and boundaries described in the proceedings of survey, which should be marked by monuments of stones and mortar." The titulo recites that "note of this title is taken on page 3 of book No. 2 in this general commissaria."

Evidence was introduced to show that the map offered in evidence correctly represented the tract of land surveyed by the officials as set out in the title papers, and evidence *contra* was offered on this point. An opinion was rendered by a divided court, rejecting the grant. The sole point decided was as to the authority of the officials. Three judges held that neither the intendente nor the commissary general was authorized to bind the Mexican nation in the sale of the land. The other two judges dissented. Defendant Ainsa was granted an order of severance (rec. p. 130), and perfected his appeal to this Court. The other defendants are opposed in interest to the grant claimant, and are interested in having the decree of the lower court affirmed and the granted rejected, and did not appeal.

The controlling question in this case is, Did the intendente, attorney general and other members of the board of sales have power to bind the Mexican Federation when the board gave final judgment November 12, 1821, that the sale of the land at public auction was "legally and solemnly

executed?" If this board had such power and was authorized to represent the Mexican government in taking payment for the land, as it did, this grant should be confirmed, because it became private property when it was thus paid for.

SPECIFICATION OF ERROR.

The court erred in rejecting this grant.

POINTS AND AUTHORITIES.

In support of the position that the acts of the intendente in ordering this sale and of the board in approving it and receiving payment for the land were authorized under the laws of the Mexican nation, we submit the following:

I.

By virtue of the proceedings prior to the revolution, the applicants for this Sonoita grant had acquired rights which were protected by the 13th article of the treaty of Cordova. It was the uniform policy of the Mexican government to carry out and confirm grants which had been initiated under Spain and had progressed as far as this Sonoita grant.

U. S. *v.* Peralta, 19 How. 343, 348.

U. S. *v.* Arguelo, 18 How. 540.

II.

By article 81 of the ordinance of intendentes of December 4, 1786, those officers were "judges with exclusive jurisdiction over all matters and questions that arise in the provinces of their districts in relation to the sale, composition and distribution of crown and seignorial lands," and they were exercising this jurisdiction at the date of the Mexican independence.

Sabariego *v.* Maverick, 124 U. S. 261.

Hall's Mexican law, par. 16, 85, 188.

III.

The acts of the intendent and other members of the provincial junta in this grant are presumed to be authorized.

U. S. v. Peralta, 19 How. 343, 347.

Gonzales v. Ross, 120 U. S. 605, 622, 623.

IV.

The fact that the grant was made on the advice of the Mexican attorney general and that the sale was approved by him and the other members of the provincial junta makes the presumption very strong, if not irresistible, that everything preceding it had been lawfully and regularly done.

Mitchell v. U. S. 9 Pet. 716, 742.

V.

The uninterrupted possession of the grantees from June 27, 1821, raises a presumption in favor of this grant.

See title paper.

U. S. v. Chaves, 159 U. S. 452, 464.

Barclay v. Howell's Lessee, 6 Pet. 498, 513.

VI.

By order of October 24, 1821, the ordinances of intendentes were continued in force without any variation.

Galvan's Collection of Orders and Decrees, 2d ed., Mexico, 1829, p. 25.

Reynolds', p. 96.

Compendium of Legislation, Mexico, 1840, p. 391.

VII.

The contemporaneous and uniform construction put upon the powers of intendentes by those officers themselves, by the commissaries general and other federal officials and by the Mexican attorneys general is conclusive that the intendentes after the revolution retained all their powers as to sales of lands.

U. S. v. Arguelo, 18 How. 539, 547.

U. S. v. Moore, 95 U. S. 760, 763, reviewing the cases.

U. S. v. Philbrick, 120 U. S. 52, 59.

U. S. v. Healey, Sup. Ct. of U. S. decided Dec. 2, 1895.

VIII.

By the 15th section of the plan of Iguala "the junta will take care that all the revenues or departments (ramos) of the state remain without any alteration whatever, and all the employees, political, ecclesiastical, civil and military, will remain in the same state in which they exist to-day," February 24, 1821. The 12th section of the treaty of Cordova provides that "upon the installation of the provisional junta it shall govern for the time being in conformity with existing laws in everything not opposed to the plan of Iguala, and until the Cortes shall form the constitution of the state."

IX.

By decree of October 5, 1821, and subsequent decrees, all authorities were confirmed as they then were for the purpose of legalizing their respective functions.

Reynolds', p. 95.

Decree of March 2, 1824, Decretos del Congreso Constituyente del Estado a Mexico.

X.

Sales of lands under Spain were one of the revenues (ramos communes), and after the independence was established the intendentes were the fiscal agents of the Mexican Federation in the states, and the colonial system of the public treasury was retained, and public lands continued to be sold just as before the revolution.

Memoria de Hacienda y Crédito Público, Mexico, printed by the Mexican government, 1870, pp. 11, par. 37.

XI.

The sales of lands to Mexican citizens after the independence was not inconsistent with the plan of Iguala, but was, in fact, so well adapted to that plan that the same system of selling lands in force prior to the revolution was continued by the intendentes and commissaries general, by the State of Sonora, and by the Mexican republic in the time of the departments with substantially no variation.

U. S. v. Arguelo, 18 How, 539, *supra*.

Laws of the State of the West of May 20, 1825, and July 11, 1834, Reynolds', pp. 129, 186.

Law of Mexican Republic of October 3, 1835, Reynolds', 195.

XII.

The official declarations of the Mexican government shows that the laws providing for sales of lands remained in force after the independence.

Circular issued by the Mexican Minister of the Interior, May 25, 1838, and approved by the President. Comp. Laws of Mexico, 3d vol., 557.

This is so declared by the Mexican jurists also.

Preface to Coleccion de los decretos y ordenes de las Cortes de España que se reputan vigentes en la Republica de los Estados Unidos Mexicanos. Mexico: 1829.

XIII.

The official circular of January 13, 1838, specifically shows that the ordinances of intendentes had not been repealed by the revolution.

Comp. Laws of Mexico, 3d vol. p. 447, No. 1906.

XIV.

The expediente of this grant remained in the Mexican archives, where it now is, and the official acts of the intendentes and other Mexican officials thus accepted and acquiesced in by the government, must be considered as valid even if done by them as officers *de facto*.

Gonzales v. Ross, 120 U. S. 605, 619.

XV.

The official acts of the intendentes and commissaries were reported to the general government, and as they

were not repudiated they must be taken as having been ratified.

Gonzales *v.* Ross, *supra*.

Order of February 2, 1822, Reynolds', p. 99.

Order of December 24, 1821.

Decree of March 11, 1822.

Decree of December 8, 1824 (2 Galvan's Nueva
Collecion, 921).

Decree of December 22, 1824 (2 Galvan, 843,
844).

Decree of May 3, 1826 (2 Galvan, 922).

Decree of October 25, 1826 (2 Galvan, 923).

Decree of Supreme Government, April 17, 1837
(3d vol. Comp. Laws of Mexico, p. 363).

XVI.

The commissary general was the head officer of all branches of the Mexican Exchequer.

Decree of September 21, 1824 (Reynolds, 123).

The instructions issued to the commissary general of December 22, 1824, authorized him to issue final title in this grant.

See these instructions, 2 Galvan's Nueva Col-
leccion, pp. 836-846.

ARGUMENT.

Only one question in this case was considered and decided in the court below, and that question was, as heretofore stated, whether the Mexican officials who made this grant were authorized to do so. The genuineness, record and location of the grant were established to the satisfaction of the lower court. As all questions are open on this appeal to this Court, the minor ones of record and located are discussed hereafter. It seems proper to discuss first and most fully this question of authority of the officers.

As set out in our statement of the facts in this case, the judges of the Court of Private Land Claims were divided on this question of authority, three holding that the officers were not authorized, and the other two judges dissenting. At the outset of this discussion we call the attention of this Court to the fact that on a subsequent presentation of this question of authority in a second case, involving the exact point, the Court of Private Land Claims took a different view of the law, and held that the same Mexican officials had authority. The law as announced by the majority of the judges in this Sonoita case has been overruled by the lower court, the learned judge who wrote the opinion having himself arrived at a different conclusion on a second presentation of the question. The case in which this different conclusion was arrived at as to the power of the officers who executed this Sonoita grant is that of *Maish & Driscoll v. The United States*, involving the San Ygnacio de la Canoa grant, decided August 21, 1896. A certified copy of the decree in that case is appended to this brief, and from it it will be seen that the Canoa grant was applied for before the same officer, Cordero, as was the Sonoita; that the petitions in both cases were admitted by Cordero on the same day,

May 29, 1821; that the surveys were made and juridical possession delivered at almost the same time, viz., on June 27 and July 11, 1821, respectively; that the proceedings of survey, appraisement and publication followed the same procedure in each case; that the final sales were made December 15, 1821, in the Canoa grant, and November 10, 1821, in the Sonoita; that such sales were approved and the lands declared by the provisional board of junta "legally, publicly and solemnly sold" on December 17 and November 12, 1821, and final payments for the lands made on such dates. It will thus appear that in every point involving the sale of the lands the grants are identical, and the Court of Private Land Claims held (see its decree hereto attached) that the sale in the Canoa grant and the formal title issued thereon vested in the purchasers of the lands a title which was complete and perfect at the date when the United States acquired sovereignty over the territory where such land is situated.

The position of appellant as to the authority of the officers who made the Sonoita grant is based on the following considerations:

1. That the intendentes had power under Spain to sell land, and that this power was in existence at the time of the Mexican revolution.

2. That the proceedings in this grant which were effected prior to the revolution were such that under the treaty of Cordova and the general policy of the Mexican government, the applicants were entitled to the completion of the proceedings and the confirmation of the grant after the revolution.

3. That the powers of the intendentes and other officials were the same after the revolution as they were before, and that the intendente and provisional board of junta were authorized to represent and bind the Mexican nation by their acts after the revolution.

If these propositions are established the grant should be confirmed.

I. AND II.

It does not seem possible to doubt that before the revolution the intendentes were by virtue of the ordinances of intendentes "judges with exclusive jurisdiction over all matters and questions that arise in the provinces of their respective districts in relation to the sale, composition and distribution of crown and seignorial lands." Such powers continued up to the date of the Mexican revolution. This is so declared by the law writers. (Hall, Mexican Law, Sec. 16.) It does not appear that the *cédula* of 1754 or ordinance of intendentes of December 4, 1786, was ever repealed. (Hall, note to Sec. 188.)

A very full investigation as to the land grants in Arizona was made under the authority of the United States by Special Agent R. C. Hopkins, and his report, which is the fullest and most accurate ever made on the subject, is printed at pages 1125-1134 of the *Public Domain*, a work issued by the United States in 1884. On page 1130 Mr. Hopkins states that "from December 4, 1786, to the date of the Mexican independence grants of the royal lands were made by the intendentes or governors of provinces," and "that on the change of governments in 1821 the *realengo* or royal lands of the Spanish government became the public lands of the Republic of Mexico, and continued to be disposed of to settlers, by valuation and sale, much in the same manner as they had been under the Spanish government."

The same statement as to the powers of the intendentes is given in the opinion cited by this Court in *Sabariego v. Maverick*, 124 U. S. 261. In addition to this, the facts in that case, in the present case, in the case of *Maish & Driscoll v. The United States* and the other

cases which have come before this Court show that the intendentes were actually and habitually exercising such powers up to the time of the revolution, and their authority must be presumed from such continued action. This Court has uniformly so held. (*U. S. v. Arredondo*, 31 U. S. 691; *Sabariego v. Maverick*, *supra*; *U. S. v. Peralta*, 19 How. 343.) "The public acts of public officers, purporting to be exercised in an official capacity and by public authority, shall not be presumed to be usurped, but that a legitimate authority had been previously given or subsequently ratified." "The presumption arising from the grant itself makes it *prima facie* evidence of the power of the officers making it, and throws the burden of proof on the party denying it."

This Sonoita grant was instituted under the Spanish rule, before the revolution, and was carried out and the lands sold and payment therefor made and final title issued thereon after the revolution. It is proper, therefore, to consider, first, what rights were acquired prior to the revolution, and, second, what rights were acquired subsequently. The foregoing is submitted as showing that all that was done prior to the revolution was lawfully done, as the intendente had full power to act as he did.

The majority opinion of the lower court in this Sonoita case expressed the view that the sovereignty of Spain "ceased on the adoption of the original declaration of independence, or, at the latest, that Spanish sovereignty ceased in the territory of Mexico on or before the 28th day of September, 1821, when the institution and organization of an independent government of Mexico became an accomplished fact."

This view seems to be opposed to the facts. At page 93 of the first volume of the Compiled Laws of Mexico is found the official decision of the sovereign junta "regarding the date from which emancipation from the Spanish government shall be reckoned in each place." That

decision is "that said date shall be understood to be the date at which the independence was sworn to in the capital of each province." This decision bears date February 11, 1822. The information obtained by the writer of this brief is that the independence was sworn to in Sonora in February, 1822. It seems worthy of consideration whether under this decision of the junta the acts of the intendente and other officials in making the sale of this land were not exercised by them as Spanish officials. If this is true, it is not open to doubt that the intendent had power to bind the Spanish government, and that the rights acquired by the grantees prior to the change in sovereignty were not affected by such change. This would be true without a treaty provision, but the 13th article of the treaty of Cordova provides in addition that all the inhabitants "shall be respected and protected in their persons and property."

The expediente of the grant shows that the governor intendent signed himself as such and was addressed as such and was acting as a Spanish official up to October 25, 1821, after which time he signs himself and is addressed as intendente *ad interim* (rec. p. 104). This date, October 25, is evidently the time when he ceased acting as a Spanish officer and began acting as a Mexican official under the new government. What was done by him and the other officials prior to the change in sovereignty gave the grantees rights which were protected by the treaty of Cordova, and which it was the policy and habit of the Mexican government to confirm.

The survey in this case was finished June 27, 1821, and the grant recites that the grantee being then and there "put in possession and being satisfied with the said survey, was admonished that he should at the proper time designate his boundaries with monuments of stone and mortar as is provided." That parties in the position of the grantee had by reason of the registry and survey of their sitios rights which were to be protected and confirmed, is clearly

shown by the provisions of the laws of the State of the West of 1825 and 1834. By article 27 of the law of 1825 "those who possess sitios, and who, although they have them registered and surveyed, have not obtained the title," were to present themselves to the treasury general of the state, and by article 31 "those who have an order for the registry of sitios under the former practice are guaranteed by this law." The same provision is embodied in article 61 of the law of 1834. "Those who hold sitios, and although they have them registered and surveyed, have not obtained the title, shall present themselves to the treasury general," etc.

Under section 9 of Article 161 of the Federal constitution of 1824 it was made the duty of each Mexican state—

"To forward to the two chambers (of the federal government) and when they are in recess to the council of the government, a certified copy of their constitutions, laws and decrees."

In *Clinton v. Englebrecht*, 13 Wall. 434, referring to a law of Utah, this Court said:

"In the first place, we observe that this law has received the implied sanction of Congress. It was adopted in 1859. It has been upon the statute book for more than twelve years. It must have been transmitted to Congress soon after it was enacted, for it was the duty of the Secretary of the Territory to transmit to that body copies of all laws on or before the first of the next December in each year. The simple disapproval by Congress at any time would have annulled it. It is no unreasonable inference, therefore, that it was approved by that body."

By order of March 17, 1826 (Galvan's *Neuva Collection*, 2d vol. 634), it was made the duty of the commissaries general to procure and forward to the supreme government a copy of all the decrees, orders and regulations passed by the congresses of the states.

Under the reason of the foregoing decision it is submitted that the fact that the laws of the State of the West, thus brought to the attention of the general government, were not disapproved, must be taken as an approval of them. The general government promptly disannulled laws of the states which were considered objectionable, and did this from the earliest days. For instance, the decree of the federal government of March 9, 1829, declares that the decree of the State of the West, No. 97, of December 20, 1828, relative to one D. Francisco Iriarte, is contrary to article 157 of the federal constitution. (Vol. 1 *Leyes y decretos Mexicanos*, p. 7.)

The law of the State of the West guaranteeing those persons who had an order for the registry of sitios under the former practice must be considered to have been sanctioned by the supreme government, and it is submitted that the treaty of Cordova, taken with this provision of the laws, shows that the grantees herein acquired rights before the revolution which were to be completed after the change of sovereignty. It would be equitable and in accordance with the provisions of the treaty to carry to a final title proceedings begun before the revolution, even if there were no power in the intendentes to institute proceedings after the change in sovereignty. Whatever date is taken as fixing the change of sovereignty the parties who registered these lands had, before the change, acquired such rights as entitled them to a confirmation of the grant. It was well known both in 1825 and 1834 that there were many cases where sitios had been registered under the Spanish government, and also cases where the registry had gone as far as survey and possession. It was the clearest justice that these rights should be perfected by the issuance of a title in form. The laws of the State of the West carefully provided for these cases, and, as above argued, the failure of the general government to disapprove such laws must be taken as an approval of them.

The conclusion seems direct that the Mexican government proposed, through the instrumentality of the State officials, to complete proceedings which had gone as far as this Sonoita grant. There is no ground for supposing that the general government was any less just in dealing with its citizens than the State of the West was, and the Mexican officials must be deemed to have been as desirous of guaranteeing those who had an order for the registry of sitios under the Spanish government as was the State. The fact that the sitios had been registered and possessed under the Spanish government entitled the registrants to have their title completed after the change of government. This Court said in *U. S. v. Peralta*, 19 How. 343, at p. 348, that "the government of Mexico since the revolution has always respected and confirmed such concessions, when any equitable or inchoate right, followed by possession and cultivation, had been conferred by the governors under Spain. The case of *Arguello* (18 How. 540) was that of a permit by Governor Sola, afterwards confirmed by the Mexican government and this court."

This subject was considered by the Supreme Court of Texas (*Blair v. Odin*, 3 Tex. 288, 289) in passing on the effect of the independence of Texas on existing rights, in which case the court said:

"A conquering general overruns and reduces to subjection a province of (or perhaps the whole of) a neighboring independent government. What is to be the course he will adopt for the government of the conquered people? Is he to destroy at once all municipal law, all their rights of property, their customs and religion? The more expanded sentiments of humanity would furnish an answer in the negative; and would declare that it is his duty to abridge rights and privileges no further than necessity and a prudent regard to the preservation of his conquest would dictate. When an integral part of a government by a successful revolution establishes its independence,

are rights of every description to be less regarded than if the people had been subjugated by a foreign invader? Such a conclusion would be too preposterous to be for a moment thought of; nor is it believed that the principles we have been discussing could lead to any embarrassing or pernicious results to the new government."

That it was the policy of the Mexican government to confirm grants which had gone as far as this Sonoita one is shown by the various cases which have already come before this Court involving similar grants. In *Cameron v. U. S.*, 148 U. S. 301, the proceedings were exactly similar. The land in that case was applied for July 19, 1821; the same governor intendente, Cordero, acted; the survey was finished October 6, 1821; the land was finally sold January 10, 1822, final payment therefor made January 11, 1822, and final title issued by the same commissary general, Riesgo, May 15, 1825.

In the San Pedro grant, which appears at pages 168-194 of the printed record of the pending case in this Court of *Camou v. U. S.*, No. 834, October term, 1895, it appears that the lands were applied for March 12, 1821; the same governor intendente, Cordero, acted; the survey was finished May 21, 1821; the land was finally sold July 5, 1822; final payment therefor was made July 8, 1822.

Each of these grants involved the actions of the intendentes, and each was ratified and held good.

Counsel has cited these cases to show what construction the Mexican officials put upon their own laws at the time. This Court has stated (*U. S. v. Arguelo*, 18 How. 540) that "the contemporaneous and uniform construction put upon their powers by officials is conclusive evidence that they rightfully possessed the powers which they claimed and exercised."

The best proof of the validity of the acts of the officials in making sales like this Sonoita grant lies in the

fact, as above stated, that such action was habitually and over a long period of time and without any exception acquiesced in and expressly pronounced valid by every official before whom the grants came. We see from this grant and the one in *Cameron v. The United States, supra*, that three years after the sale was made the papers were examined by the commissary general, who was the chief officer of the Mexican government, and pronounced valid by him, and that title in form was issued by him upon the prior proceedings. and Mr. Hopkins' report states that this was done in a number of grants. (*The Public Domain*, p. 1128).

In the San Pedro grant (set out in the transcript in *Camou v. The United States, supra*), on October 25, 1832, more than ten years after the sale of the lands, the treasurer general of the State of Sonora laid the proceedings before the governor of that state, informing him that he considered the expediente "as sufficient, legal and completed with all the formalities established by law," and final title was issued on the proceedings of 1822. In the Canoa grant, as will be seen by the certified copy hereto annexed of the decree of the Court of Private Land Claims, the record of the sale made by the board of sales 1821 came before the treasurer general of the state of Sonora in 1849, 27 years later, and a formal title was issued on the proceedings of 1821. These acts recognized the validity of the sales made by the intendente and the board of sales, because the record of such sales was before the officers as they are now before this Court.

The Supreme Court of Texas says: "This court has repeatedly announced the doctrine that they will defer to the political and judicial authorities of other governments in the administration and interpretation of their own laws. The court will respect the acts of the former authorities, as they must have known more about their laws than we do." (*Halloman v. Peebles*, 1 Tex. 673; *Hancock v.*

McKinley, 7 Tex. 384; Edwards v. James, 7 Tex. 382; Cavazos v. Trevino, 35 Tex. 133, 157.)

"The construction of their powers and of the laws which conferred them, adopted and acted upon by the authorities under the former governments of the country must be respected until it be shown that they have clearly transcended their powers, or have acted manifestly in contravention of law. The presumption must be that they rightfully possessed and exercised those powers which they were accustomed to exercise, until the contrary be shown." It would not be reasonable to suppose that the high officials who acted in the execution of this grant did not have "as enlightened views in respect to the true policy of the government and as just an appreciation of their powers and duties as we possess in respect to them." (Hancock v. McKinney, *supra*.)

The majority of the lower court overlooked the fact that the proceedings before the revolution gave the parties rights which entitled them to have the proceedings consummated and final title issued thereon after the revolution. The title paper of this grant shows that prior to the revolution the grantee had incurred the expense of making application for the land and other expenses incident thereto, namely those of the notifications, the declarations of the witnesses as to ability to stock the lands, the expenses of the surveyor, those of the auctions, the fees of the cryer and drummer, the charges for stamped paper, etc., etc. The fact is of the greatest importance that prior to the revolution the applicant was put in possession of the land. This the title paper states under date of July 11, 1821. The interested party was "put in possession, and he being satisfied with the said survey, he was admonished that he should at the proper time build up his monuments of stone and mortar, as is provided."

This state of facts brings the case directly within the ruling in U. S. v. Peralta, above cited. We have shown,

in addition, that the State of Sonora passed laws, which must be taken as meeting with the approval of the general government which recognized the justice of confirming grants like the Sonoita, and when we examine the best evidence of all, to wit, the action both of the state government and of the general government, as shown by the similar grants cited, we find that both these governments habitually recognized and confirmed grants which had progressed as far as this one had. Such rights were, as above stated, guaranteed by the treaty of Cordova.

It is therefore respectfully urged that the acts of the intendentes in carrying on these proceedings after the revolution were in accord with the treaty and the policy of the Mexican government.

It is submitted that this uniform practice of the intendentes, recognized and ratified by the supreme government, brings this case within the doctrine of *U. S. v. Arguelo*, 18 How. 539, *supra*, where, construing the powers of the Mexican governors, this Court said, at p. 549, "If anything further were wanted to fortify this construction, the uniform practice of the territorial governors would be conclusive." The uniform practice of the intendentes is conclusive as to their powers.

III. AND IV.

As showing that the intendente was authorized, we rely, further, most strongly on the fact that the final sale was made on the advice of the Mexican attorney general or promotor fiscal. In *Mitchell v. U. S.*, 9 Pet. 716, at page 742, this Court had under consideration the validity of a sale which had been made under the advice of the Spanish attorney general, and held that as the grant was made on such advice, the presumption was very strong, if not irresistible, that everything preceding it had been lawfully and rightfully done. This holding is applicable to

the present case. In *Hornsby v. U. S.*, 10 Wall. 224, this Court repeated what it had announced in *Fremont's* case, 17 How. 561, that it "could not, without doing injustice to individuals, give to the Mexican laws a more narrow and strict construction than they received from the Mexican authorities who were entrusted with their execution."

The same principle is announced by the Supreme Court of California: "The general rule is that when the acts of a foreign government are brought in question in our courts, the acts performed by them will be presumed to have been within the scope of their lawful authority, unless the contrary appears." *Mott v. Reyes*, 45 Cal. 379, 385.

Under article 81 of the ordinances of intendentes no sale was made until "the matter had been duly examined into by an attorney of the royal treasury," and the intendents in making sales of lands took action in conjunction with their ordinary legal advisers. (Reynolds, 61.) By the decree of October 5, 1821 (Reynolds, 95) of the sovereign provincial council of government of the Empire of Mexico, all authorities were "habilitated and confirmed as they then were, in conformity with the plan of Iguala and the treaty of the village of Cordoba, for the purpose of legalizing the exercise of their respective functions." The 15th section of the plan or Iguala provides that "the junta will take care that all the revenues or departments (ramos) of the state remain without any alteration whatever, and all the employees, political, ecclesiastical, civil and military, will remain in the same state in which they exist to-day." By the treaty of Cordoba, "the provisional junta was to govern for the time being in conformity with existing laws in everything not opposed to the plan of Iguala, and until the Cortes shall form the constitution of the state."

By decree of February 26, 1822, the sovereign constituent congress "confirmed for the present all authorities, civil as well as military, of whatever kind they may be." (2 Galvan's New Collection, 849.) By decree of March 2, 1824, "the constituent Congress of the Free, Independent and Sovereign State of Mexico decreed that * * the governments of cities and other corporations, civil as well as military and ecclesiastical, will continue to perform their official duties as theretofore committed to them, being guided in everything by existing laws."

These decrees show that the promoter fiscal, or attorney general, under the Spanish rule, was confirmed as he then was for the purpose of legalizing the exercise of his office. He thus became a duly authorized Mexican attorney general, and was such on November 7, 1821, when he gave his written opinion (rec. p. 103) that the land should be sold. The land was ordered to be sold "in accordance with the opinion of the promoter fiscal" (rec. p. 104), and this brings this case directly within the ruling of this Court in *Mitchell v. U. S.*, 9 Pet. 716, *supra*. The present case is even stronger, for the attorney general was one of the members of the board of sales, and took part in the proceedings, and he was also one of the members of the provincial junta, and, with the other members, made the written and formal statement (rec. p. 107) that the sale had been "legally and solemnly executed."

The importance of this fact will not, we feel sure, be overlooked by this Court. The validity of the proceedings of the sale of these lands is called in question in this case. In considering this question we find that the properly constituted and acting law officers of the Mexican nation, the owner of the land and the granting power, considered the same question and gave their legal opinion that such sale was legal. This was done not in one isolated case but in all the cases which have come before this Court. Can it be

urged with any show of reason that these Mexican attorneys general did not know the laws of their own country, or that their official opinions are to be disregarded? The grantee was put in possession, as above stated, June 27, 1821. A transfer of the grant was made more than ten years after. The expediente of the grant has remained in the archives of Mexico to the present day, three-quarters of a century. The possession given to the grantees was never disturbed, so far as appears by the record, and must be presumed to have continued. The sale, which was pronounced valid by the attorney general, has been for all this long period of years respected by all the authorities, national and state, and was expressly recognized as valid when the grantee, Herreros, and the owner of the adjacent grant appeared before the comandant of the presidio of Tubac, and made the agreement regarding the boundaries of this Sonoita grant. (Rec. p. 41). Under these facts it seems impossible to avoid the conclusion announced in a similar case by the Supreme Court of Texas (*Cavazos v. Trevino*, 35 Tex. 133, 165), "It is fairly to be presumed from the long-continued possession of the appellees under both the Spanish and Mexican governments, disturbed by no action of the political authority, and questioned by no adverse claimant, that the grant was in all respects regular and legal," and in *Johns v. Schutz*, 47 Tex. 578, 582, where the court said: "As has been often said, it will be presumed that the acts of a former government are within and not in excess of their authority. This presumption, in connection with an undisturbed possession of about forty-five years, more than twenty of which elapsed while the land in question was subject to the jurisdiction from which the grant emanated, is quite sufficient to establish the *prima facie* validity of the grant."

VI.

These decisions of all the Mexican law officials that the intendentes had power to act as they did, raise an irresistible presumption that such actions were regular. But we are not left to presumption, as strong as it may be. There is express statutory authority giving the intendentes power to act after the revolution just as they did before that time. This is found in the law of October 24, 1821 (Reynold's p. 96), in which it was ordered that the "intendentes in the cases and matters that severally belong to them" act "in conformity with their ordinances without any variation in them, consulting the regency or the Sovereign Council (Junta) in those things or matters within their attributes, the determination of which may not be within the power of said officers or offices."

This statute so clearly continues the intendentes in office without any change in their powers that no extended comment on it is necessary. It is submitted as direct, unequivocal authority that the ordinances or intendentes were in force without any variation at the time the intendente acted in this Sonoita grant, and that therefore his actions were lawful and authorized.

It was, in fact, universally understood that the ordinances of intendentes were in force, without change, after the revolution. The "Repertorio de Legislacion," or Compendium of Legislation, published in 1840 in Mexico (a copy of which is in the law library at Washington) contains an "alphabetical and chronological index of the most noteworthy matter contained in the collection of laws, decrees and mandates that have been issued in the Republic from the year 1821 to the year 1837, including the two volumes in which the laws and decrees of the Spanish Cortes and those issued by king Ferdinand VII. have been amended (or remodeled), and which are held to be in force and form a complement (part) of said collection.

A most useful work for all kinds of persons and especially those who dedicate themselves to the study of jurisprudence."

"On page 391 of this work is the following: "Ordenanzas de Intendentes. No se hara variacion alguna en ellas. Orden de 24 de Octubre, de 1821," the translation of which is "Ordinances of Intendentes. No change whatever shall be made in them. Order of October 24, 1821."

It is simply unquestionable that the Mexican law writers as well as the Mexican officials thought that the ordinances of intendentes had been continued in force without any variation whatever.

The Supreme Government of Mexico itself in 1838 recognized the Ordinances of Intendentes as being in force. This is shown by the circular found on page 552 of the 3d volume of the Compiled Laws of Mexico.

This statute of October 24, 1821, and the interpretation given it by the Mexican law writers were not known to counsel or the lower court when this *Sonoita* case was argued. It is understood that when the statute was called to the attention of the court when the question of the power of the intendente again came before it in the *Conoa* case, the statute was regarded as showing that the intendente had power, and was the reason why the court took a different view of the law. It is submitted that the statute as interpreted at the time furnishes a direct answer to any question that may be raised as to the power of the intendente to act as he did in this grant.

In addition to the presumption arising from the opinion of the attorney general, there is the presumption arising from the grant itself. This Court has said in *Gonzales v. Ross*, 120 U. S. 605, *supra*, that where a "public officer has a public duty to perform, in the absence of evidence to the contrary the presumption would be that he acted in accordance with the law as known at the time.

* * All favorable presumptions will be made against the forfeiture of a grant." A material question in this case is, Where officers had, prior to the revolution, power to make sales of lands, what presumptions attach to their acts after the revolution and before the passage of any new laws on the subject? This question is specifically answered in *U. S. v. Peralta*, 19 How. 343, *supra*. There one Sola was the Political and Military Governor, under Spain, of California. He continued to exercise the same powers after his adhesion to the Mexican government under the provisions of the plan of Iguala and the 12th section of the treaty of Cordova, and in October, 1822, after the revolution, issued a grant in fee to lands where the proceedings had been instituted prior to the revolution. His authority to do so was called in question,*but this Court held "it is sufficient for the case that the archives of the Mexican government show that such power (to grant land) has been exercised by the governors under Spain and continued to be so exercised under Mexico, and that such grants made by the Spanish officers have been confirmed and held valid by the Mexican authorities." It certainly seems that this decision directly controls the present case. The archives show that the intendente and board of sales exercised such powers under Spain and continued to exercise it under Mexico, and that such grants have been confirmed and held valid by the Mexican authorities.

X.

But even if there was not the statute and presumptions as to the power of the intendentes to make sales of lands, it would be clear from the plan of Iguala and the treaty of Cordova that sales were to be made after the revolution just as before. The 15th section of the plan of Iguala provides that "the junta will take care that all the revenues or departments (ramos) of the state remain with-

out any alteration whatever, and all the employees, political, ecclesiastical, civil and military, will remain in the same state in which they exist to-day," February 24, 1821.

The Mexican government officially published in 1870 the *Memoria de Hacienda y Crédito Público, presentada al Secretario de Hacienda al Congreso de la Union*," a work giving the detailed history of the government of Mexico under the many forms which it assumed, and of the treasury department in the various epochs. On pages 62 and 63 of this work the colonial epoch, the one preceding the revolution, is treated of, and it is shown that one of the "ramos communes" was that of the "ventas, compras y confirmaciones de tierras," sale of royal lands. The revenues which have been received from such sales are given in a tabulated form with the other "ramos comunes."

Here, it is submitted, is the unimpeachable historical proof, furnished officially by the Mexican government, that one of the revenues or "ramos" which were to "remain without any alteration whatever," was the sale of vacant lands such as are embraced within this Sonoita grant. As this particular revenue remained without any alteration whatever," sales would have to be made by the same officers and in the same manner as before. On page 11 of this *Memoria* it is stated that "the fiscal agents of the governments in the states were the intendentes," and that "when the independence was established the colonial administrative system of the public treasury was retained." Accordingly, as is shown in the extracts heretofore given from expedientes between the years of 1821 and 1825, in every case charges were made as they had been under Spain. The officers did, in fact, what they were bound to do under the plan of Iguala, that is, they kept the revenues from the sales of lands in force "without any alteration whatever."

By the treaty of Cordova "the provisional junta was to govern for the time being in conformity with existing laws in everything not opposed to the plan of Iguala, and until the Cortes shall form the constitution of the state."

That the laws for the sale of lands to Mexican citizens were not opposed to the plan of Iguala is shown by what may be fairly termed a volume of evidence. It has been above seen that all of the officials considered these laws in force, and acted under them. When the State of Sonora came to make its law of May 20, 1825, it declared, article 32, that "the tax for army expenses, the half annate tax and the percentage which the former government collected as a general tax are abolished." This fact shows that the system of selling lands under the former government was not abolished by the change of sovereignty, but that it continued under the intendentes and commissaries up to the passage of this law.

And as absolutely conclusive on this point we cite the official circular issued by the Minister of the Interior of Mexico, on May 25, 1838, and approved by the President, found on pp. 1021-1022 1st vol. Galvan's *Colleccion de leyes y decretos*, and also on p. 557, 3d vol. *Comp. Laws of Mexico*, as follows:

"It must be principally noted that there are in force all such laws as are not openly inconsistent with the prevailing system and unless they are found to have been expressly repealed by any other subsequent disposition, this rule also holding good in regard to those laws which were decreed (passed) in the very remote epochs, and under the different forms of government which the nation has had; and that, therefore, the courts and other authorities daily transact their various duties under the existence of the laws of the Cortes of Spain, of the laws of Partidas and Compilation, as long as this disposition is not repugnant, more or less, to the form of government in which they were sanctioned.

"This principle being established, there follow two natural consequences; the first is, that there ought to be

considered as in force the laws of the old States, whenever these contain the requisites mentioned above, unless they are repugnant to the form of government under which they had their origin, or unless the supreme government has enacted any other, since their requirements cannot be superior (paramount) to the laws.

“The other consequence is, that if the orders of the government were the result of some of its constitutional attributes, or of some other subsequent law that authorized such or another act, then the laws of the States ought not to be considered as in force, not because they are repugnant to the requirements of the government, but because the law authorizes it to decree this or the other decree contrary to it, by the same right that any other decree is abolished by former legislation.

“From the foregoing it is the opinion of the commission that the advice of the government can be obtained, unless the council, with better judgment, resolves differently.

“Be pleased, your Excellency, to advise his Excellency and receive the documents which were transmitted.

“And this being approved by the President, he has seen fit to order it to be communicated to the governors of the departments, so that they may take notice of this decision for the general good.”

XI, XII and XIII.

The ordinances of intendentes, providing for the sales of lands to Mexican citizens, were not repugnant to the form of the government under which they were sanctioned, nor were they repugnant to the government after the revolution, for lands were sold in the same way by the states, and the state laws for selling lands were continued in force under the departments. If it was not opposed to the plan of Iguala for the new government to sell, for an adequate consideration, lands to its own citizens in a part of its domain where every reason existed to promote settlement and occupancy of the vacant lands, and thus give protection to the frontier from the Indians, then the laws

for the sale of lands existing before the revolution were continued under the intendentes. We believe that the Mexican nation recognized that it was as necessary for its citizens to own land, raise cattle and pursue the ordinary vocations of life after the revolution as before, and that as the laws for the sale of lands under the intendentes had been in successful operation so long, it was the part of wisdom to continue them rather than go to the unnecessary trouble of making new laws.

This Court in the Arguelo case, 18 How. 539, *supra*, speaking of the policy of Mexico with regard to the sales of lands to her own citizens, said:

“While a judicious policy might forbid the settlement of large bodies of foreigners on the boundaries and sea-coast, we cannot impute to them (the supreme government of Mexico) the weaknesses or folly of confining their native citizens to the interior, and thus leaving their sea-coast a wilderness without population. On the contrary, the same considerations of policy which excluded foreigners would encourage the settlement of natives within those bounds. The statute books of Mexico abound in acts offering every inducement to Mexican families to settle on the frontiers.”

The statement in the majority opinion in the Sonoita case that “the government of Mexico made no law authorizing disposition of the public domain until January 4, 1823,” is quite true, if a new or different law is referred to, because the existing laws were adequate and were kept in force by the plan of Iguala and treaty of Cordova. No new law was passed because none was needed.

XIV and XV.

By repeated enactments the intendentes and commissaries general were required to report all their proceedings to the supreme government and to furnish a list of

all the archives under their charge. By order of February 2, 1822 (Reynolds, p. 99), it was enacted

“That a report of the receipts of the treasuries since independence was sworn to be forwarded by the intendencies of the empire; and a statement of the receipts and disbursements of the last 15 days since the 24th of December, 1824, and repeat this operation hereafter in the same period.”

The decree of December 24, 1821, was

“First. That the intendencies shall transmit a clear and detailed statement of the resources existing in the principal and sub-treasuries of their respective districts on hand in each department at the time the independence was sworn to in the places where these offices exist.”

Again the decree of March 11, 1822, provides

“2. The general treasury and all the district and sub-treasuries shall transmit every month to the secretary of the treasury an exact statement of the funds received, disbursements made and balance on hand, for his information and that he may make such disposition of said balance as will best serve the welfare of the nation.”

By decree of December 8, 1824 (2 Galvan's Nueva Coleccion, 921), which was communicated to all the commissaries, they were commanded to prepare an orderly arrangement of the archives of each commissary, together with an index (table of contents).

Again by decree of December 22, 1824 (2 Galvan, 843, 844), the instructions to the commissaries provided that

“Art. 72. At the time of their assuming their duties in the different branches to be under their charge, the commissaries general shall take care to make exact and correct inventories of whatever may appertain to each branch, of all property on hand in the different classes which compose the same, as well as of all papers, causing the latter to be arranged in an orderly manner and not allowing any of them to be lost, inasmuch as they must

form the references in every case that may present itself."

This decree was referred to in the one of March 1, 1826 (2 Galvan, 922), communicated to the commissaries general, wherein it was stated that they must have prepared "the index or inventory of the archives of the former intendency as well as that of each commissary office," and the commissaries general were directed by order of the president to forward a copy of said indexes or inventories to the general government as soon as possible.

By decree of May 3, 1826, (2 Galvan, 922), communicated to all the commissaries, they were required on the last day of each month "to prepare a report of all transactions of their office, with a list enumerating all cases, one by one, stating the nature thereof, what has been done in the premises, who has it in hand, and the cause of its non-settlement."

By decree of October 25, 1826 (2 Galvan, 923), communicated to all the commissaries general of the federation and to the secretaries of the general treasury, those officers were to render "an exact statement of all cases which remain pending in their offices, explaining their present state, and noting on the margin the amount in favor of the public treasury involved therein."

Again, the law of April 17, 1837, of the supreme government (3d vol. Comp. Laws of Mexico, p. 363), provided that inventories of all documents should be taken and forwarded to the supreme government.

The above laws show that the duty was time and again enjoined on the intendentes, treasurers and sub-treasurers and on the commissaries general to render to the supreme government a full abstract or inventory of all the documents under their charge, and a detailed statement of moneys on hand and of receipts. Under these

IN THE
Supreme Court of the United States

OCTOBER TERM, 1897.

No. 27.

SANTIAGO AINSA, ADMINISTRATOR, APPELLANT,

vs.

UNITED STATES.

**Copy of Affidavit of George J. Roskruge, and Other
Documents Filed for Appellant.**

(Copy.)

TERRITORY OF ARIZONA, }
Pima County, } ss :

George J. Roskruge, of lawful age, being duly sworn according to law, makes oath and says that he is a surveyor and has been such for about 27 years; that he has lived in Pima county, Arizona Territory, about 25 years; that during that time his occupation has been that of a surveyor; that he has been county surveyor of said Pima county, chief draughtsman in the office of the U. S. surveyor general for Arizona, chief clerk in said office, and also has been the U. S. surveyor general for said Territory; that he is the person who surveyed the San José de Sonoita private land claim or grant and who made the map thereof, a copy of which faces

page 122 of the printed record in case No. 15708, Ainsa, adm'r, etc., vs. The United States, in the Supreme Court of the United States; that he is the same person who made the official map of Pima county, Arizona, marked "Official map of Pima county, Arizona; authorized by board of supervisors; compiled and drawn by George J. Roskruge, ex-county surveyor;" that said map was made by him from data collected during about 18 years, and that it is accurate and correct.

Affiant further states that he has, with the very utmost care possible, calculated the area of the land contained within the limits of said private land claim, as represented by the map facing page 122 aforesaid; that such area was computed, first, by the method of scale and protractor, as laid down on page 170 of Trautwine's Engineers' Pocket Book, which is a standard work on land surveying; that according to such computation the area within the limits of said map is 12,340.72 acres, and no more; that affiant again, with the greatest care and accuracy, computed said area by a mathematical computation by latitude and departure, according to which computation the area within the limits of said map is 12,447.97 acres, and no more.

Affiant further states that the aforesaid calculations are as nearly accurate as can be made, and that it is mathematically impossible that the area within said map can vary materially from the aforesaid figures.

GEORGE J. ROSKRUGE,

Subscribed and sworn to before me this 15th day of February, 1898.

LAUTARO ROCA,
Notary Public, Pima County, Arizona.

My commission expires October 14, 1901.

(Copy.)

(Seal of the State of Sonora.)

(Canceled stamp.)

VICTOR AGUILAR, Treasurer General of the State of Sonora,
Republic of Mexico.

I certify that in the archives of this treasury general there exists a document of the following tenor:

Index of the unfinished titles of lands which in July, 1829, were delivered to me at Alamos for their transmittal to this office by the then commissary general of the State of the West, Don Juan Miguel Riesgo.

A title of land at the place called Lo de Rodriguez, in favor of Don José Alday and Don Pedro Contreras, as husband of Da. Rosa Alday.

Another at the place called Jesus Maria (á) El Bacuachi, in favor of Don Juan de Dios Noriego.

Another at the place called San José (á) La Nopalera, in favor of Dn. José Maria Acuña.

Another at the place called Las Lajitas y Palos Blancos, in favor of Dn. Ygnacio Flores.

Another at the place called San Benito (á) La Palmita, in favor of Don Benito Tapia, Don Domingo y Don Francisco Canas.

Another at the place called San Nicolás y Sesentona, in favor of Don José Domingo Ayllon.

Another at the place called Los Sinaloas, in favor of Don Narciso Montoya.

Another for a place between the middle of Cocoraqui and the Alamo de los Ybarras, in favor of Don José Antonio Sotomayor.

Another for the place San José de Los Alamos, in favor of Don José Grijalba.

Another at the place called El Palmarito, in favor of Don José Antonio Lapisco.

Another at the place called La Casa Colorado, in favor of the residents of the town of Cumpas.

Another at the place called Los Chinos, in favor of Don José Louis Rendon.

Another at the place called La Peña Blanca y el Sapuchi, in favor of Don Pedro Galvez.

Another at the place called San Antonio del Aguaje, in favor of Don Francisco Olguin.

Another, which contains two small memorandum books and a statement giving information about the lands called San Joaquin, which were denounced by Don Joaquin Zazueta.

Another of the place which is situated between the sitios Aramuapa, Llano del Venado, Alamo, and the endowment of the town of Ocoroni, denounced by Don José Maria de Olivar y Monge.

JOSÉ MARIA MENDOZA.

ANTONIO CARRILLO.

ARISPE, *June* 30, 1831.

This is given at the request of Mr. Rochester Ford, at Hermosillo, on the 24th day of January, 1898.

V. AGUILAR.

Translation from the Preface to the Collection of the Decrees and Laws of the Cortes of Spain which are Considered in Force in the United States of Mexico. Mexico, 1829. Print of Galvan, under the Charge of Mariano Arevalo.

"The independence of Mexico having happily been established by the occupation of its capital on the 27th of September, 1821, as well as the destruction of the vice-royal government, although the ties of dependence upon Spain were forever broken, the laws which regulated the duties and rights of those who composed this new society could not and ought not to be considered as abrogated, inasmuch as such laws could not be changed except in the course of time and by the competent authorities. The sudden abolition of all the laws would have been equivalent to the establishment of an absolute monarchy at a crisis when there was the greatest necessity for security.

"Thus it is that, with the exception of those laws which directly conflict with the memorable plan of Iguala and the new order of things which it created, all the other laws which had emanated from the Kings of Spain and the sovereign authority which had been recognized up to that time continued to be respected and observed. Unsettled questions were decided by such laws, justice was administered in conformity with such laws, and according to the tenor of such laws the Mexicans adjusted their social life."

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

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| SANTIAGO AINSA, ADMINISTRATOR, appellant, v. THE UNITED STATES. | } | No. 27. |
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APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

**ABSTRACT, STATEMENT, AND BRIEF ON BEHALF OF THE
GOVERNMENT.**

ABSTRACT AND STATEMENT.

This suit was instituted by the United States under the provisions of section 8 of the act of March 3, 1891, being an act to establish the Court of Private Land Claims and to provide for the settlement of private land claims in certain states and territories. (U. S. Stat. L., vol. 26, p. ~~585~~) *854*

The issues were made up by the defendant, Santiago Ainsa, as the administrator of the estate of Frank Ely,

deceased, filing an amended answer, by which he claims to own in fee, hold and possess the land known as the SAN JOSÉ DE SONOITA grant, situate in that portion of Arizona acquired from the republic of Mexico under the treaty of Mesilla (Gadsden purchase) of December 30, 1853, under and by virtue of an alleged grant title bearing date May 15, 1825, made and executed by one Juan Miguel Riesgo, commissary-general of the treasury, public credit and war of the state of the occident, in the name of the sovereign nation of the Mexican republic, under and by virtue of article 81 of the royal ordinance of intendants of December 4, 1786, and pursuant to the provisions of the royal decree of October 15, 1754; that under the provisions of the law the said commissary-general of the state of the occident, in the name of the sovereign nation of the republic of Mexico, duly and regularly, and for a good and valuable consideration, to wit, the sum of one hundred and sixteen dollars, two reales and five grains, and for other good and valuable considerations in said grant title set forth, did, on May 15, 1825, sell and convey in fee to one Don Leon Herreros the said land known and called the San José de Sonoita grant or private land claim; that said proceedings were instituted by said Herreros by petition to Brigadier-General Cordero, governor and intendant of the province of Sinaloa and Sonora, praying for two *sitios* of land, more or less, in a place known as Sonoita in the jurisdiction of the *presidio* of Tubac, and that proceedings of survey, valuation, and publication were taken on said petition, and on May 15, 1825, the tract,

as surveyed according to said title papers, and the whole of said tract, according to the natural landmarks and boundaries as set out in said proceedings of survey, was sold to said Herreros for the sum of one hundred and sixteen dollars, two reales and five grains, which amount was thereupon paid by said grantee; and that on said May 15, 1825, there was issued to the grantee a *testimonio*, or *titulo*, of said grant, and that the said grant was thereupon on said last-named date duly recorded in the archives of Mexico, to wit, on page 2 of the proper book in the office of the commissary-general.

It is averred that the map filed with the petition, executed by George D. Roskrige, esq., is a correct map of said San José de Sonoita grant, and correctly represents the boundaries of said grant and lands embraced therein, comprising 12,147.69 acres, and that the defendant is the owner in fee of the whole thereof.

It is also averred that proceedings were taken under the provisions of the act of congress of July 22, 1854, before the surveyor-general of Arizona, for a confirmation of the grant, and the same was recommended for confirmation by said surveyor-general only to the extent of one and three-fourths *sitios*, as measured by the original grant, and no more. It is averred that Ainsa, the defendant, holds by divers mesne conveyances from the original grantee.

It is also averred that the other persons claiming to own the property under the public land laws of the United States, as mentioned in the original petition by the United States, are unlawfully upon the same and

without warrant or authority from the defendant, Ainsa, the claimant under the original grant; that by virtue of his original grant and mesne conveyances, and his possession of the property, the defendant is entitled to have the whole of said tract, as surveyed by said Roskruge, confirmed under the provisions of the act creating the Court of Private Land Claims. (R., 6-9.)

To this amended answer the government filed a general reply putting in issue the various allegations of it. (R., 9, 10.)

A translation of a certified copy of the *expediente*, on file in the office of the treasurer-general of the state of Sonora (R., 89-108), was offered in evidence by the claimants. The original *testimonio* or *titulo*, in Spanish (R., 109-116) and translation thereof (R., 116-123), was introduced by the claimants.

The first portion of this *titulo* was executed in 1825 (R., 116) and forms no part of the original proceedings. The petition was directed to the intendant governor by Leon Herreros, resident of the military post of Tubac, and states that to the east of said post about eight leagues is situated a place known as Sonoita, which had anciently been an Indian town, but it was abandoned by reason of the incursions of the Apache Indians; and desiring to provide a place to herd some of his cattle, and having no land upon which to do so, he registered in the aforesaid place two *sitios* of land, which he promised to stock with cattle and horses, and offered to pay the just price at which it might be valued. This petition was signed by José Ma. Sotello, for Leon Herreros (R., 117). It will

be noted that the petition specifies the exact amount of land registered, which was two *sitios*.

At Arizpe, on May 29, 1821, Cordero, the governor intendant, allowed the petition, without prejudice to third parties having a better right, and directed the commander of the company at Tubac to proceed to the survey of the lands registered by the petitioner, summoning the adjoining owners, and directed him to appoint experts to appraise the land at its just value, which he should publish for thirty consecutive days, asking for bidders, and execute all the proceedings required by law until the *expediente* should be completed to a condition to be remitted to him, in order that further proceedings might be taken in the special tribunal, so as to issue corresponding grant or title (R., 117, 118); and at Tubac, on the 22d of June, 1821, Ygnacio Elias Gonzales, purporting to be the commander of the company stationed at Tubac, accepted the appointment. (R., 118.) It will be noted that this appointment is signed by Ygnacio Elias Gonzales and attested by José Ma. Sotello, the attorney petitioning for Herreros, and Pedro Ramierez.

Thereupon Gonzales proceeded to nominate the officials, to-wit, the citizens Manuel de Leon, José Ma. Sotelo, and Don José Monreal, who purported to have qualified under oath to faithfully perform their mission; and after taking a general view of the place and the limits of the adjacent proprietors, they executed the survey, as appears from the following report (R., 118, 119):

In the abandoned place of San José de Sonoita, on the twenty-sixth day of June, 1821, I, the said

lieutenant-commander and subdelegate of the military post and company of Tubac and its jurisdiction, in order to make the survey of the land denounced by Leon Herreros of this vicinity, delivered to the appointed officials a well twisted and stretched cord, and in my presence was delivered to them a Castilian *vara*, on which cord was measured and counted fifty regulation *varas*, and this being done, at each end were tied poles, and standing on the spot assigned by the claimant as the centre, which was in the very walls of the already mentioned Sonoita, there were measured in a northeasterly direction sixty-three cords, which ended at the foot of some low hills, a little ahead of a spring—a chain of mountains of a valley, which goes on and turns to the east, where was placed a heap of stones as a monument; * * * from the place where the monument was placed there was measured to the southeast twenty-five cords, which going up a valley ended on the left side of a chain of hills, and at the foot of one of them, whose slope was covered with oak trees, and in the top was placed a heap of stones as a monument; and on the opposite side there was estimated also twenty-five cords, ending on a high white hill covered with grass, distinguished by this reason from the others near it, which are a part of the Santa Rita mountains, and on the top I ordered a heap of stones to be placed as a monument. In this way the measurement was finished at this end of the survey, with its proper corners and heads. Turning to the center, the cord was measured in the direction of the east, and there were measured and counted twenty-five cords, ending before reaching a high mountain located on this side, on a somewhat high hill, covered with many oak trees, where I ordered to be put a heap of stones in sign of a

monument. Returning to the center, the cord was laid toward the west and twenty-five cords were measured, ending on the main road to Tubac, on a little hill called the "*casadero*," on which was placed a heap of stones as a monument. * * *

Taking as a starting point the place designated as the center, the cord was extended toward the south all along down the *cañon*, by which there were measured and counted three hundred and twelve cords, that ended in the same *cañon* upon going down a hill, on the main road, at a place called the First ford, with the direction looking toward the west, on account of the turn which the said *cañon* had made, and there was put a heap of stones as a monument, and as heads of corners there were estimated on the side twenty-five cords, to the other side of a ledge that ends in high, rolling bowlders in which a hill that forms a little valley, where I ordered to be placed a heap of stones as a monument. And on the left side there were estimated by the surveyors twenty-five cords to the first of two hills almost exactly alike, one to the other, which are named the Twins, which serves as a monument, as these are distinguished from all the other hills which surround them, and on the summit I ordered to be placed a cross. This end of the survey is about two leagues, more or less, off from the Calabasas ranch, at the nearest place, and the other end only adjoins with places frequented by the enemies as they come to rob and invade the country. And in view of the suggestion made by the claimant to reduce the number of cords actually measured so much as might be calculated to be in fact in excess of the true measurement by reason of the many turns of the *cañon* over which the survey was made, as it could not be carried on straight. I appointed

for that purpose Lieut. Don Manuel Leon and the citizen Don José Ma. Sotelo, who were unanimously of the opinion to deduct twenty-five cords out of the three hundred and twelve cords measured in the last survey down the *cañon*, the claimant consenting thereto as just; the survey was calculated to be two hundred and eighty cords, with which this survey was finished, resulting from it one *sitio* and three-fourths of another *sitio*, registered by Don Leon Herreros for raising stock and for farming purposes. (R., 118-120.)

These proceedings of survey occupied two days, and a report is made for each day, both of which are signed by Ygnacio Elias Gonzales, Manuel de Leon, and José Ma. Sotelo. It is to be noted that Sotelo is the attorney for the petitioner. The assistants or witnesses attesting these reports were Ygnacio and Tomas Ortiz, who were the grantees in the Canoa grant (*U. S. v. Maish et al.*, No. 297), which is for argument with this case.

Then follows the appraisement, by which the calculated amount of land, one and three-fourths *sitios*, was valued at one hundred and five dollars, and at which value a publication of thirty days, soliciting bidders, was made, and no one appearing, the claimant presented himself with the *expediente*, which by the decree of October 21 was sent to the *promotor-fiscal* for report. (R., 120.)

On November 7, 1821, Francisco Perez, the *promotor-fiscal*, made his report, stating that he had carefully examined the land surveyed in favor of Herreros in the place called Sonoita, from which resulted one and three-fourths *sitios*, for raising stock and horses, valued at sixty dollars each *sitio*, which sums up one hundred and five

dollars; that it had running water, and some pieces of land for cultivation, and that the same having been published for thirty consecutive days and no bidders offering more than the appraised value, the commissioners inquired and found the claimants had the means to settle and occupy the land, wherefore he advised that the three publications at the capital, seeking for bidders at auction, should be made, and that the same should be sold to the highest bidder with the understanding that he would have to pay into the national treasury the whole value of the land, eighteen per cent for forwarding, two per cent for the general fund, and three dollars for the officials of the extinguished treasury department, and that he should be given a receipt for the total sum, which must be attached to the *expediente* and the same should be sent to the superior board of the public treasury in order that it might be determined what should be done in the premises. (R., 121.)

Then follows an indorsement by Bustamante, the intendant, attested by José Ma. Mendoza and Joaquin Elias Gonzales, wherein he states (R., 121):

And this commissary-general being satisfied with the foregoing petition, the three publications were made, which took place on the 8th, 9th, and 10th days of November, 1821, the one *sitio* and three-fourths of another being solemnly auctioned off in favor of the denouncer, Don Leon Herreros. Immediately notice of the transfer being added to the original *expediente* it was given to his agent, who answered in writing that he was satisfied with the proceedings, that he should be allowed a settlement with the

treasury, and that the corresponding title and confirmation should be issued to his principal. In virtue whereof the following order was issued:

* * * * *

The Spanish text of the foregoing is as follows (R., 114):

Y habiendose conformado esta comisaria general, con el preinserto pedimento, se procedió á la celebracion de las tres publicas Almonedas, que se practicaron en los dias 8, 9, y 10 de Nobiembre de 1821, quedando solemnemente rematados el expresado sitio y tres cuartos de otro á favor de su denunciante D. Leon Herreros. En acto continuo se le corrió traslado con el expediente original á su apoderado, contesto pr. escrito estar conforme con todo lo actuado, que se le admitiese á composicion con la hacienda, y q. se le librase á su parte el correspondiente titulo de merced y conformacion. En tal virtud se proveyó el auto en vista q. á la letra sigue.

Then follows the order of Bustamante, issued from the city of Arizpe on November 12, 1821 (R., 121), stating that he had examined the documents of survey, appraisal, and publication, auction and sale of the lands at the place called San José de Sonoita, containing one and three-fourths *sitios* for the raising of cattle, in favor of Herreros, and the report of the *promotor-fiscal*, and declaring the proceedings to be in good order and form, and that he allowed settlement to be made with the national treasury for the said lands of said Herreros, and he ordered that notice be given to the agent of Herreros, to deliver to the treasury in that city in the following manner the sum of one hundred and sixteen dollars, two reales and five

grains; one hundred and five dollars as value of said land; six dollars, one reale, seven grains, as land fee, and its eighteen per cent; two dollars ten grains for the two per cent for the general fund, and three dollars as fees of the extinguished account of the same treasury; and upon the certificate thereof being inserted in this *expediente*, the same should be reported to the superior board of the treasury for its approval or to make such disposition of it as to them might appear best. (R., 121-122.)

This closes the *testimonio* with the exception of the extending of the original grant by Juan Miguel Riesgo on May 15, 1825, four years and a half after the closing of the *expediente*.

Referring now to the proceedings as shown by the *expediente* subsequent to the report of the *promotor-fiscal*, Francisco Perez, we find that on November 7, 1821, Bustamante ordered that the three *almonedas* or offers of sale should be made (R., 104), and that Serrano, the attorney for Herreros, should be notified; then follows the appearance of the attorney (R., 104) and the three *almonedas* in due form on November 8, 9, and 10 (R., 104-105).

On November 10, 1821, the following order appears (R., 105):

ARIZPE, November 10, 1821.

Let this *expediente* pass over, with the authorized copy, containing the superior proceedings according to the regulation on the subject, to the attorney, Don José Ma. Serrano, so that within three days he may take such steps as he may think proper on the subject, notifying him to appoint in Mexico an attorney duly authorized and paid to expedite the case at that

court. The intendant *ad interim* so decreed it and signed it with assistant witnesses according to law, in default of a secretary, there being none.

BUSTAMANTE.

Asst: JOSÉ MA. MENDOZA.

JOAQUIN ELIAS GONZALES.

NOTE.—On the same day this *expediente* was delivered in seventeen folios, according to this decree.

Following this is the acknowledgment by Serrano, attorney for Herreros, of the foregoing order, expressing his desire to comply with the same and hasten the *expediente* to a perfect conclusion. (R., 105, 106.)

All of the foregoing proceedings taken in the *expediente* were attempted to be summarized by the preamble to the order of Bustamante, dated on the 12th of November, 1821, before cited. (R., 121.) This order is found in the *expediente* (R., 106), and in the *testimonio* (R., 121-122).

In the *expediente* the following proceedings appear: Notice and acceptance of notice to the attorney Serrano of the order of November 12, 1821, fixing the total amount due (R., 107); following this is the action of the provincial board of the national treasury at Arizpe, finding that the sale of one and three-quarters *sitios* of land at one hundred and five dollars was legally made, and directing that report be made to the superior board of the treasury of this *expediente* for its approbation or for such disposition as it might think proper (R., 107). On the same day is the order of Bustamante directing that the order of the board should be executed, and on

the same day is an entry in the account books of the provincial office of the national treasury at Arizpe, on folio 37, that there was charged one hundred and sixteen dollars, two reales and five grains, which had been paid by Serrano in the name of Herreros in the following manner: One hundred and five dollars as principal value for one and three-quarters *sitios* of land for raising cattle contained in the place of San José de Sonoita; six dollars, one real and seven grains, one-half annual charge, and eighteen per cent for transfer to Spain; two dollars and ten grains for the two per cent as a general charge, and three dollars for the extinguished account as explained in the order of the *intendencia* marked No. 32; total one hundred and sixteen dollars, two reales and five grains. (R., 107.)

Following this is a certificate as follows (R., 108):

And that it may be admitted, wherever it may be presented, we issue the present.

Arizpe, November 12, 1821.

MIGUEL MA. DE LA FUENTE.

TOMAS DE ESCALANTE.

This is the *expediente*, as originally made up and concluded on November 12, 1821, and no further proceedings appear to have been taken on the same until May 15, 1825, when the following appears (R., 108):

NOTE.—On May 15, 1825, title was issued on this *expediente*.

[RUBRICA.]

All of these proceedings taken in the *expediente* after the order of Bustamante (R., 106), down to and including the certificate of Fuente and Escalante (R., 108),

are attempted to be summarized in the *título* or *testimonio* in the following manner (R., 122):

The agent being notified of this order, he proceeded to make the payment ordained, as appears by the certificate adjoined to the *expediente*, in which state it remains in the keeping of the general office (*comisario general*) as a perpetual record.

The Spanish text of which is as follows (R., 115):

Notificada q. fué esta providencia al apoderado procedió este á hacer el entero que se le previene, como lo acredita la certificacion qe. se agregó al Expediente respectivo, en cuyo conformidad queda custodiado en esta Comisario general pa. la perpetua constancia.

The formal title, which appears to have been issued by Riesgo on May 15, 1825, is pursuant to the alleged authority of article 81 of the royal ordinance of intendants under the provisions of the royal *cedula* of October 15, 1754, and based upon these two decrees he seeks to grant and confirm the title of the property, in the name of the sovereign nation of the republic of Mexico, to Herreros to one and three-quarters *sitios* of land which had been surveyed in his favor upon the condition that he occupied and cultivated the land to the utmost of his ability, without allowing it to be totally abandoned for one entire year, and should there be any other person asking to settle upon it in such event, previous notice being given, it should be sold to the highest bidder, and that Herreros should confine himself to his own limits and boundaries prescribed in the proceedings of survey, which should be marked by monuments of stone and mortar, in which terms he ordered the present title, and

directing that, previous note of it having been taken in the corresponding book, the original should be delivered to the claimant for his protection and use as legitimate proprietor, owner in fee, and only possessor of the land. (R., 122-123.)

[The use of the phrase "owner in fee" is inaccurate. It should be "absolute owner" (*dueño absoluto*). I make this correction for the reason that no such estate as a "fee-simple," known to the common law, existed in Spain or Mexico, the element of perpetual succession being absent.

Special attention of the court is called to the form and make-up of the *testimonio* or *título* in the Canoa case. (See Canoa, R., 30-52.) This *testimonio* exactly conforms to the *expediente* in the Sonoita case, and is a copy of the *expediente* in the Canoa case on file in the archives at Hermosillo, differing materially in form and recitals from the *testimonio* in the Sonoita case. It is true that the alleged final title in the Sonoita case and the preamble attached to the *expediente* were not executed until May 15, 1825, whereas in the Canoa case they were executed on the 2d of February, 1849. The *expedientes* in both of these cases were made up by the same officers and within a few days of each other, and the authority for making them was based upon the order of governor and intendant Cordero on May 29, 1821.]

R. C. HOPKINS testified, on behalf of the defendant, that he was seventy-eight years of age, and from 1855 till 1886 was in the service of the United States in connection with Spanish land grants in California and Arizona. In 1879 he was sent as special agent to

Mexico for the purpose of examining the records in relation to private land claims, and spent several months in such examination. Witness identified the title papers in the Sonoita grant; said that he believed the signatures of Juan Miguel Riesgo and José Maria Mendoza to be genuine; is familiar with the Spanish language. During his examination of the archives he examined the *expediente* or matrix of this grant, and thinks it was written upon stamped paper. On cross-examination he does not recollect whether this grant was noted in the book of *toma de razon*, but does not think the *toma de razon* went back of the year 1825; states that the *testimonio* or *titulo* should be a copy of the matrix or *expediente*, but could not say whether such was the case in this instance or not, though he thinks the *expediente* is complete in this case; does not think that there was any note made in the book of *toma de razon* of this grant, nor does he recollect of seeing a *borrador* of the same in the archives; does not recollect whether there was in the archives any copy of the proceedings taken in 1825 in this case; the *expediente* should contain each step down to the issuance of the grant; there is no copy of the grant attached to that. Witness states that a copy or *borrador* of the grant should be attached to the *expediente* in the archives, and such is generally the case, and the original of the same attached to the *testimonio*, although such is not always the case either in Hermosillo or in California; that the *expedientes* in San Francisco are made up in the same way and the *borrador* is generally attached to the proceedings, and the *testimonio* ought to

be a copy of the *expediente* or matrix; there should be attached to the *expediente* a copy of the original patent or grant in order to make it regular.

On redirect examination witness defines a *borrador* as an unsigned copy of the grant, a copy of the title made by a clerk and attached to the proceedings that remain on file; it is generally stitched together in the form of a copy book, but is not always so, either at Hermosillo or in California. Witness's report was made up from notes taken in an actual examination of the archives. The *titulo* is a document signed by the governor intendant, the grant itself not containing the proceedings; if a copy of that is attached to the matrix, of course it should be an exact copy, but not signed, as it is not an original, the signatures being all copies; it is a rough copy attached by the clerk to the proceedings in making up the *expediente*, and very often the offers of sale for thirty days are set out in full in the *expediente*, whereas only a statement of the fact is sometimes made in the *titulo*. On recross-examination witness stated that such proceedings were accepted, although they were not full and perfect; to be regular, it should contain a copy of all the proceedings with the original title attached. (R., 11-17.)

SANTIAGO AINSA, the defendant, testified on his own behalf that he is an attorney at law, a Mexican, and understands the Spanish language; has made a very thorough examination for his own business of titles to lands in the present territory of Arizona issued by the preceding government. For fifteen years he has been *dabbling* in these grants, and has examined them in

Sonora and in Mexico very often. Witness identifies the *titulo* of the San José de Sonoita grant. As far back as 1879-80 he has seen it, when it was placed in his hands by the owner, Alsua; he examined it thoroughly, translated it, prepared the case for the surveyor-general's office, and presented the same there. Witness has made an examination of the signatures attached and says he believes them to be genuine; has seen the matrix or *expediente* of this title at Hermosillo, examined it there, and compared the *titulo* twice with the *expediente*, and believes the matrix to be true and genuine. The *testimonio* or *titulo* differs in some parts from the matrix or *expediente*; the location of the measurements is not in the *titulo*, and part of the sales is omitted, but this same omission occurs in a great many others. The granting clause at the end of the *titulo* is never to be found in the matrix or *expediente*, and there is no copy left. Sometimes you will find a sort of memorandum made out for the purposes of the clerk, drawing out what he should do, and from that copy is made the granting clause which is attached to the instrument which is delivered to the grantee; that copy is called a *borrador*; it is not in every grant, is not official, and has no existence in the law. The granting clause is never attached to the *expediente* in the archives, and if he found one so attached, it would seem very singular. Witness found no book in which was entered the *toma de razon* of this grant, and he searched very diligently for one several times and found none existing prior to the one commencing in 1831; there is only one book of *toma de*

razon in the office, which begins on October 24, 1831. (R., 17-20.)

GEORGE J. ROSKRUGE testified, on behalf of the defendant, that he was forty-eight years of age, resided at Tucson, his occupation being a surveyor for twenty-two years, and he has been living in Arizona for about twenty years. Has surveyed all over Pima county, and he surveyed what is known as the San José de Sonoita private land claim. Witness then described the manner in which he made the survey, to which the special attention of the court is called. (R., 21.)

It may be stated, in summing up the testimony of this witness, that with the title papers before him he paid some attention to the general courses named in the survey contained therein, but paid no attention to the distances or area mentioned therein; that his survey was made by triangulation, and that the map offered in evidence, showing the claim of the defendant, was made by scaling triangulations on a sectional map. He took part of the monuments from which the map was made because they answered the calls of the *expediente*, and he was satisfied they were the original monuments called for; otherwise he would not have taken them. The area surveyed was very much in excess of the amount called for, which was one and three-quarters *sitios*, and the objects which he designates as monuments were piles of stone, and that there were similar piles of stone all over the country. Ninety-nine per cent of the hills were covered with piles of stone such as he identified as monuments. (See his testimony, R., 34.) Witness took a

number of photographs of these various monuments, from which their character will fully appear, as they are on file with the clerk of this court. (R., 20-39 and 66-70.)

J. E. MCGEE testified, on behalf of the defendant, that he was forty-six years of age, and for a portion of the time he has been in Arizona he has lived on Sonoita creek, which runs through section twenty-two; lived there in 1877-78. Had heard of the abandoned San José mission, and from what he was told thought it to be located in section fourteen, township twenty-two, range fifteen east. On cross-examination witness states the ruins were scattered up and down the river for two hundred yards; he was first in the valley in 1875, and hunted for the grant monuments, but could not find them; the grant was talked about in 1875-76, and he had heard about it before it was filed with the surveyor-general; first heard of the old mission of San José in San Francisco, before he came there, by what he read in books. (R., 39-41.)

Defendant introduced in evidence (R., 41) what purports to be a correct translation of a copy of an indorsement which appears on the title papers of the Calabasas and Tumacacori grants.

Mr. HENRY O. FLIPPER testified, on behalf of the government, that he is a civil engineer by profession, and is employed as a special agent of the Department of Justice in the office of the United States attorney for the Court of Private Land Claims. He had been employed for ten or eleven years in the survey of public lands in Mexico under concessions from the Mexican government,

and that he was familiar with the system of land surveying in Mexico, and had surveyed land grants in Arizona under the direction of the United States attorney. Among the grants he had surveyed was the San José de Sonoita, which he surveyed in 1892, and over again in 1894. In the survey of the San José de Sonoita he had a copy of the *expediente*, and went first to the point claimed to be the abandoned place of Sonoita. After a thorough examination of this point he was convinced it was not the abandoned place of Sonoita as described in the *expediente*, for the reason that the surveyor of the original grant described his starting point as a point where there were ruins and walls, whereas when he examined it he found houses that could not have been there in 1821. He took the course laid down on the claimant's map, and in the course chained sixty-three cords, described in the *expediente*, but found no monument. The end of this line was about three-quarters of a mile south-westerly from the northeast center monument as shown on map of claimants. The termination of the sixty-three cords was upon a *mesa*, or table land, where there was no valley and no spring, and for that reason he did not measure eastwardly, but did measure the twenty-five cords of the *expediente* westwardly in search of a monument, but found none. He searched over the surrounding hills and found no monument, though there is a white limestone hill such as found in the *expediente*.

From the point at the house he measured the full distance on claimant's map, three miles and seventy-three chains, but found no monument. Thence he went to

claimant's northwest monument, which is a small pile of loose stones, a foot or eighteen inches high and probably three feet across. Within fifty or one hundred yards of this pile of stones is another similar pile. They were upon a hill not unlike neighboring hills. The witness testified that there were a great number of just such piles of stones all over that section of the country, and that the general supposition was that they had been built by the Indians.

From the northeast center monument Mr. Flipper continued northerly to see how the country compared with the description of the *expediente*. Far from being rough and inaccessible, it is such as can be easily measured with a chain for fifteen miles or more, which led him to believe that it was not the land described in the *expediente*. Witness returned to the initial monument and measured thence easterly to the high hill. Two large monuments about a quarter of a mile apart were visible from the table-land below, and he measured the distance to determine which of them was claimed by claimants. The distance was one mile and forty-five chains, more than twice the twenty-five cords of the *expediente*. He counted fourteen piles of stones within a radius of a quarter of a mile of the monument.

If a parallelogram three hundred and fifty cords long by twenty-five cords wide, running northeast and southwest, with the north center monument as the center of the northeasterly line, were staked out, it would not conform to the claimant's survey. The monument marked "ledge" is uncertain, because there are several places or

ledges in the *cañon* that fill the conditions of the description in the *expediente*.

Witness found the southeast corner monument as claimed, but just across the creek from it are quite a number of similar piles of stones. He also found other ruins there, among them a trench some four hundred yards long, with a stone at each end sunk to the level of the ground, which was undoubtedly a place where the Indians played games, and all over that country were similar piles of stones.

Witness described the twin hills as being unlike others in the vicinity simply because they were close together. On one of these hills there is a pile of stones with a cactus growing upon it. The *expediente* states that a cross was placed at this point. (R., 42-53.)

R. R. RICHARDSON testified, on behalf of the United States, that he lives near Crittenden, in the Sonoita valley. Witness examines map handed to him, and says he went to the point marked on the map as "initial monument," to the top of the "white hill," and other corners. Was with Mr. Flipper and was also with Mr. Oury out there. Mr. Oury pointed out the point called the monument on top of the white hill, which was a pile of stones a foot or eighteen inches high and three or four feet across. There were many similar piles of stone in the vicinity and one or two within a hundred yards. Within a quarter of a mile there were quite a number. In going from the pile of stones pointed out by Oury to the initial monument, witness would pass by five or six similar piles of stones. Witness went to the "*casadero*" with Oury,

who pointed out a pile of stones there similar to the others; he pointed out the pile of stones that he had taken as the west center monument; it was located right at the side of the old trail which leads from the valley over toward Salero-Tubac. He has been over the trail a number of times. Going to the northeast center, as pointed out by Oury, he did not find anything along the route, but at the place there was an *adobe* house which belonged to Sanford. North and west from that point, Oury pointed out an old pile of stones as the corner, about the same as the other piles; saw three or four other piles of stones in the vicinity. The hill was a white hill covered with grass; the dead grass gave it its color. There were plenty more hills of the same character in the vicinity. At the point on the map marked as "chain of hills," witness went there with Oury and found another old pile of stones, no different from the others, and in the neighborhood saw quite a number of them, and only saw one close by. On the hills across the valley were quite a lot. There is no spring on the line drawn from the initial monument to the northeast center monument. There is water right in the Sonoita, perhaps a mile above; down in the river bed there is a place where the water comes up. He would not call it a spring where the water comes up from the bottom of the Sonoita. At the initial monument, marked on the map as the "abandoned place of Sonoita," there were a couple of *adobe* houses there when witness first saw it, with mud roofs, supported by cottonwood poles; they were modern buildings. Saw evidences of ruins on four or five acres—*adobe* walls

and stones, fallen down and washed; saw pottery in the neighborhood. There were quite a number of similar ruins in the vicinity. (R., 53-57.)

THOMAS HUGHES testified on behalf of the United States that he resides in Tucson and first went to the Sonoita valley in the summer of 1868 and lived there till 1883. Never heard of the abandoned place of Sonoita until about 1880, when the grant was filed before the surveyor general; nobody was in possession of the same then; there were three or four Americans there, but they were not claiming under any grant; thinks the valley was surveyed as public lands of the United States in 1878. People have made entries there under the public land laws and some of them have been patented. There was no one in the valley during the time he was there asserting any title over any portion of the same under any Mexican grant. Witness has not been there but two or three times since 1883. Has been assessor and collector of the county, and does not know of any settlement being made there under any grant claim. While he was living there, a surveyor, Mr. Harris or White, came to his house and asked if he had ever heard of the abandoned place of Sonoita, stating that he had been looking for it for two days at a time; witness told him he had never heard of such a place and does not know whether the surveyor afterwards found it or not. Witness has found old pottery over a large area where Indian villages have evidently been located, every place he looked within a half mile of the valley on both sides, and at these places the evidences of

ruins looked like old corrals and little houses. The landmarks of stone were some square and some round, and it was evident a large number of Indian families had lived there. He noticed a great number of places where they had evidently been grinding corn, and the stones were broken up, as if they had been attacked and cleaned out. (R., 57-60.)

CHARLES A. SHIBBELL testified, on behalf of the United States, that he had lived in Pima county since 1862, first going to the Sonoita valley in 1865, and lived there until August, 1868, when he was driven out by the Indians. When he went there, there was nobody living in the valley claiming to occupy the land under a grant. Knows the place where Wightman located and built a house (this is contended as the initial monument in this case); he has passed up and down the road by it quite often. When he first went there, about half a mile up on a hill there were some ruins of an *adobe* house of two rooms with a portal between them and a roof of modern construction. Does not know of any ancient ruins with pottery or old Indian villages. Saw piles of stone in several places as large as the counsel table and a foot or eighteen inches high, but did not think they were very numerous because he never paid much attention to them, and he accounted for them as having been built by the Indians; witness has seen ruins in a number of places along the valley towards the south. He was recorder of Pima county and states that the Sonoita grant was recorded in the records of that county in Book 3 of Old Records, pages 1 to 11, July 13, 1865, at 8 o'clock a. m. Witness states that

his testimony with relation to the appearance of the point termed the initial monument is based upon his knowledge of it as it was at the time he saw it, and he does not pretend to say what it was in 1821. He has not been to the point designated on the map as "a high hill," and does not know whether there is a monument there or not; does not know of the "*casadero*." Does not know whether there is a monument at the point termed "S. E. monument;" does not know anything about the monuments or the mountains to the northwest of the Santa Ritas. The Sonoita creek runs down the southwestern side of the mountain and rises down below old Fort Buchanan; the water rises below the road to Harshaw, between that place and the place called the initial monument; knows the San Cayantano mountain, which is sort of northwest from where the Harshaw road leaves the valley; the San Cayantano mountain is north of the Sonoita creek. (R., 60-65.)

The United States here offered in evidence the certificate of the treasurer general of the state of Sonora that the book of items and charges corresponding to the year 1821 does not exist in the archives. (R., 123.)

PETER R. BRADY testified, on behalf of the United States, that he knows the Sonoita valley and came down the valley in 1854, when he was a member of a railroad surveying party, and went down pretty much the length of the valley. At that time there was nobody living in the valley claiming under the San José de Sonoita grant or any other grant; there was nobody there at all. (R., 65-66.)

Defendant offered in evidence the testimony of Frank Oury, deceased, taken before the district court. It will appear from his testimony that he does not locate the monuments in this grant at the ends of the measurements called for in the *testimonio*, nor does he locate them at the same places as Mr. Roskruge.

In all of these surveys it may be noted that the distances called for and the amount of land specified seem to have been studiously ignored.

BRIEF AND ARGUMENT.

In presenting this case, it is suggested that this brief will form the basis from which the briefs in the other Arizona cases, which are to be heard at this term, will be taken, and I deem it prudent to declare the fundamental principle to be, that a grant made by one without lawful authority therefor is void in all countries.

It is contended on behalf of the United States that at the time the grant in this case was initiated, and subsequent thereto, intendants did not have lawful authority to dispose of the vacant public lands. This court held in the case of *UNITED STATES v. VALLEJO*, 1 Black, 541, "That the decree of the Spanish Cortes of 1813, as well as all other laws of Spain in relation to the disposition of the Crown lands, were inapplicable to the state of things which existed in Mexico after the revolution of 1820, and could not have been continued in force there, unless expressly recognized by the Mexican congress," and not then without being essentially modified in their policies and purposes. It was also

expressly held by this court, in the case of *MOORE v. STEINBACH* (127 U. S., 70-81), that "the doctrine * * * that the laws of a conquered or ceded country, except so far as they may affect the political institutions of the new sovereign, remain in force after the conquest or cession until changed by him, does not aid their defence. That doctrine has no application to laws authorizing the alienation of any portions of the public domain, or to officers charged under the former government with that power. No proceedings affecting the rights of the new sovereign over public property can be taken except in pursuance of his authority on the subject."

While intendants and other officials (who were loyal to the new government) were continued in office according to the plan of Iguala and the treaty of Cordoba by the decree of October 5, 1821 (Reynolds, 95), still this does not go to the extent of continuing in full operation and without modification the laws of Spain in relation to the disposition of the public lands, and can only have reference to their functions of a political and executive character, and it in no wise militates against the general doctrine announced in the two decisions before referred to.

I shall attempt to show by the laws of Spain and Mexico the various officials and official bodies who were authorized to dispose of the public lands—lands of the empire and then lands of the republic; and I wish the court to observe that counsel for claimants in all of these cases ignore that period in the history of Mexico known as the empire, dating from the election of Iturbide as emperor on May 19,

1822, by the congress assembled on February 24, 1822, under the provisions of the plan of Iguala and the treaty of Cordoba. I seriously contend that this omission is not without knowledge of the existence of the epoch. A proper consideration and recognition of the existence of this government for the space of nearly one year, May 19, 1822, to March 29, 1823, will render untenable the position counsel are necessarily forced to assume in order to sustain the action of the officials as lawful.

The date which I adopt for the beginning of the investigation is that of the ordinance of intendants, December 4, 1786.

Article 1 of said ordinance divides New Spain into twelve intendancies, without including the Californias. (2 White, 67.)

Article 2 provides that the control of the royal treasury is to be given to the superintendent of the same. (Ibid., 68.)

Article 3 provides for the commissions of intendant general and provincial intendants, and is as follows:

ART. 3. To the end that in no case and in no manner the superior authority which I have conferred and vested in my Viceroys may be confounded, I desire and command that the Viceroy of New Spain and his Successors in that Viceroyalty put their *Cumplase* (*Let it be complied with*) not only on the Titles of the Intendants which are issued to those of the Provinces included in the district under their command as they do on those of their Governors, but also on that which may be issued to the Intendant-General of the Army and of the Royal Treasury of said Kingdom; but this latter must also afterwards put it on the Commissions of the Provincial Intend-

ants as Superintendent of my Royal Treasury, inasmuch as they are to be subordinate to him in everything relating thereto, as provided in this Ordinance and as was indicated in the preceding Article. For the same reason said Superintendent shall also put his *Cumplase* (*Let it be complied with*) on the Commissions that may be issued to the Intendants of Arizpe and of Durango, and when presented in this condition to the Commandant-General of the Frontiers he shall likewise put his upon them, note being first taken of them in the Office of the Auditor of Accounts in Mexico, as well as of others in their time, and of both afterwards in the Offices of the Principal Auditors in the Provinces to which they severally belong.

Article 4 authorizes the creation of the superior board of the treasury at Mexico.

Article 5 provides for substitutes on the board in case of absence or inability of any of the members to act.

Article 6 prescribes the times of meeting and functions of the superior board of the treasury. (*Ibid.*, 68.)

Article 7 defines the jurisdiction and powers of the intendants in the four cases of justice, police, treasury, and war. (Reynolds, 59.)

Article 10 provides for the political and military governments that remain in existence. (Reynolds, 60.)

Article 81 defines the powers and duties of intendants in the matter of the sale, composition, and distribution of the public lands. (Reynolds, 60, 61.)

Article 105 provides for the establishment of provincial boards of the royal treasury, and is as follows:

ART. 105. Extraordinary expenditures of the character indicated with respect to each Intendancy

shall be passed upon by a Provincial Board of the Royal Treasury which, for the purpose of considering them, and of determining the causes that require them, shall be established in its capital, and be Composed of the Intendant, his Acting Legal Adviser, the Principal Officers of the Royal Treasury, and his Attorney-General with a vote in the cases in which he does not officiate as a party, preserving in their seats the order in which they are named; and, together with a *testimonio* of the proceedings, the Intendant shall make a report to the Superior Board in Mexico, through the Superintendent Subdelegate as its President, in order that it may, after having seen and examined the points therein with the attention that is due and which the Laws recommend, decide what it may judge most convenient, and in consequence thereof issue the corresponding order that the expenditure consulted about and its payment by the proper Treasury may be made, or be disallowed in case said Superior Board so determines.

Article 164 provides for a provincial board of sales in the capital city, and is as follows:

ART. 164. To the end that what has been ordered in the two preceding articles may have all the effect desired, the Board of Sales in the Capital at Mexico shall continue, proceeding in its functions in accordance with laws 2 and 3, title 25, book 8, of the *Recopilación* (Compilation), and being composed of the Intendant-General, the junior Judge of that Audience, the Attorney-General of my Royal Treasury and the Auditor and Treasurer, Officers thereof; and a similar Board shall be established in the Capital of each one of the other Intendancies, that of Guadalajara being composed of the same officers respectively as in Mexico, while there is an

Audience at that place; and in the others the Intendant, his Acting Legal Adviser, the Officers of the Royal Treasury and a Defender thereof whom the Intendant shall appoint, both preserving in their seats the same order in which they are named; and in case, in that of Mexico or Guadalajara, because of absence, sickness, or failure of the Intendant, his Acting Legal Adviser attends, he shall take his seat after the Attorney-General and before the Offices of the Royal Treasury. And the said Boards and Sales shall be held necessarily in the very houses in which are the officers of the Auditor and the Treasury of my Royal Exchequer, in order that the attendance of their Chiefs may be compatible with the importance of their not abandoning them.

This ordinance was modified by the royal decree of March 23, 1798 (Reynolds, 65), and the causes for the modification are to be found in the communication and orders of October 22, 1791 (Reynolds, 62), and January 19, 1793 (Reynolds, 63), together with the communications mentioned in the body of the decree.

The same was further modified by royal decree of February 14, 1805. (Reynolds, 68-75.)

On August 29, 1805, Viceroy Iturrigaray, under the instructions of the superior board of the treasury, promulgating regulations for the government of intendants, stated that the King has prescribed in the decree of February 14, 1805 (*supra*), that the owners of land should have one year within which to settle and cultivate the lands that were uncultivated and vacant, with the understanding that they should otherwise revert to the

public domain and vest in and be adjudicated to whoever might denounce them. (Reynolds, 76-77.)

This system for the disposition of the public lands was changed by the constitution of March 18, 1812 (Reynolds, 79), and by the law of the cortes of January 4, 1813 (Reynolds, 83), passed in pursuance thereof, providing a different method for disposing of the public lands. A central council of government had been formed, and recognized the regency, and the latter, in its efforts to resist the French invasion, decided to summon the people in an election of an extraordinary cortes, which was installed September 24, 1810, and on March 18, 1812, promulgated the constitution referred to, and on January 4, 1813, the cortes provided by decree for the disposition of the public lands in the Spanish dominions to private individuals and to the defenders of the country. (Reynolds, 30.) By this constitution and decree we have an entirely different system provided for the disposition of the public lands, and it can hardly be contended that both the new and old systems were in operation at the same time. It is a general rule, recognized by the civil-law, that a posterior repeals an anterior law on the same subject, although the prior law may not be referred to by way of express repeal. (Smith's Civil Law of Spain and Mexico, p. 100; Escreche's Elements of Spanish Law, translated by Bethel Lockwood, 1886, p. 27.) The regency and the cortes were acting for the King, Ferdinand VII, in his enforced absence from the realm.

Ferdinand VII, however, returned to the throne, and on May 4, 1814, at Valencia, issued a decree in which he

refused to recognize the existing order of things, declared the constitution of 1812 revoked, and issued various subsequent decrees designed to restore all offices and officials as they existed prior to the constitution of 1812.

The universal ministry of the Indies was restored June 28, 1814. (2 White, 155.)

The royal and supreme council of the Indies was restored on July 2, 1814. (2 White, 156.)

On December 28, 1814, the King issued a royal *cédula* or edict, the ninth article of which is as follows (1 White, 168):

9. The governor-intendants shall resume all the powers appertaining to them before the promulgation of the constitution, so called; and shall consequently exercise said powers, as well in matters of government as in those of economy and litigation relating to the royal treasury, agreeably to the laws and ordinances respecting intendants.

This decree shows that the ordinance of intendants had been derogated, presumably by the constitution of 1812, which abolished the system of government now restored by this decree.

Mr. Hall, in his work on Mexican Law, section 188, page 76, says:

By a resolution of the council of the Indies, before a full board at Madrid, on the 23d of December, 1818, and approved by the King, it was declared that all business pertaining to the alienation of land in New Spain should belong to the department of the office of the treasury of the Indies, at Madrid. This was probably issued on

account of the revolutionary condition of Mexico at that epoch, as this was by three years prior to the independence of the Mexican nation.

He also adds a footnote, which is as follows:

And yet it does not appear that the *cédula* of 1754 or ordinance of December 4, 1786, was ever repealed.

The author evidently overlooked the principle announced with reference to the effect of the promulgation of a posterior law upon an anterior law covering the same subject-matter. Appreciating the fact that if Mr. Hall was correct as to the promulgation of such a decree it resulted that the officers in New Spain were deprived of any authority over the public lands, I deemed it prudent, not to rely alone upon his statement, and therefore, through the proper official channels, I obtained from the City of Mexico a certified copy of this decree, translation of which is as follows:

General and Public Archives of the Nation. Mexico.

I, Justino Rubio, Keeper of the General and Public Archives of the Nation, certify:

That, in compliance with the superior order of the Department of Affairs, dated April 12th 1894, search has been made, in these General Archives under my charge, for the Royal Order of December 23rd 1818, at the request of the Minister of the United States of America, and, having been found in volume No. 219, of the Division of Royal Cédulas, page 382, the present copy is made, said Royal Order being literally as follows:

Royal Order. Note replied to in No. 757 of the 31st of May, 1819, No. 382.

Most Excellent Sir: To the consultation of the Supreme Council of the Indies, in full council of three Chambers of the 13th of the month last passed, after examination of all the prior circumstances of the matter, his Majesty has been pleased to declare that all matters relating to the sale of lands in those dominions belong to the Department of the Exchequer of the Indies under my charge.

Which by royal order, I communicate to your Excellency for compliance therewith.

God preserve your Excellency many years.

Madrid, December 23d 1818.

JOSÉ de YMAS. [A rubric.]

Viceroy of New Spain.

Mexico, March 9th 1819. Acknowledge receipt of this Royal Order, reply that it is understood, and circulate it to whom it may concern.

DEL VENADITO. [A rubric.]

It was circulated on the 4th of June in print.

Agrees with its original which exists in the above mentioned volume of the Division of Royal Cédulas, in these General Archives, and in witness thereof, wherever and whenever necessary, I give the present certificate, in Mexico, on the thirteenth of April, eighteen hundred and ninety-four.

JUSTINO RUBIO.

I have no doubt the reason given by Mr. Hall for the promulgation of this decree was correct. But if such were not the case, I am satisfied that the authority exercised by the intendants under the ordinance of 1786, and its modifications made from time to time, ceased to exist in 1820.

Under pressure from the people, the King in 1820 adopted the constitution of 1812, and took the oath to support it, and thus again the ordinance of intendants was repealed, because repugnant to the provisions of this constitution, as was the case in 1812, when the constitution was first promulgated. (Upon the reestablishment of the monarchy, in 1814, and setting aside the constitution of 1812, Ferdinand VII recognized that the ordinance of intendants had been abolished by virtue of the provisions of the constitution when first adopted, and hence it was necessary for him to issue the decree of December 28, 1814, *supra*.) The officers created in virtue of that constitution were reestablished, and also the various decrees prescribing their functions and duties. These decrees are found in "Micelanea Constitucional," vol. 2, "COLECCIÓN DE LOS DECRETOS DICTADOS POR EL REY, DESDE 9 DE MARZO HASTA 9 DE JULIO DEL AÑO DE 1820, CON EL OBJETO DE RESTABLECER LA CONSTITUCIÓN POLÍTICA DE LA MONARQUÍA ESPAÑOLA, POR EL LIC. JUAN FRANCISCO DE AZCÁRATE, MÉJICO, 1820, EN LA IMPRENTA DE D. ALEJANDRO VALDES," and translation of them is as follows:

Decree of March 6, 1820.

To the Department of Grace and Justice :

My royal and state councils having represented to me how important it would be to the welfare of the monarchy to convene the cortes, approving their recommendation, because it conforms to the observance of the fundamental laws which I have sworn to uphold, I desire that the cortes be convened immediately, to which end the council will

dictate such measures as it considers proper, that my wishes may be realized and that the lawful representatives of the people invested with the necessary powers in conformity with those measures may be heard, so that everything required by the general welfare will be agreed upon, with the certainty that they will find me prompt in whatever is demanded by the interests of the state and the well-being of a people who have given me so many proofs of their loyalty, for the success of which my council will consult me on all doubts that occur to it, so that there may not be the least difficulty or delay in its execution.

You will see that it is understood, and give the necessary orders.

Decree of March 7, 1820.

To the Department of State:

To avoid the delay that might arise on account of the doubts that might occur to the council in the execution of my decree of yesterday for the immediate convocation of the cortes, and such being the general will of the people, I have decided to take the oath to uphold the constitution promulgated by the general and extraordinary cortes in the year 1812.

Decree of March 9, 1820.

To the Department of State:

The King, Don Ferdinand VII, by the grace of God and the constitution of the Spanish monarchy, has issued the following decree:

Having decided, by the decree of the 7th inst., to take the oath to uphold the constitution promulgated at Cadiz, by the general and extraordinary cortes, in the year 1812, I have concluded to take the oath, *pro tempore*, before a provisional council

(*junta*) composed of persons who enjoy the confidence of the people, until said oath can be solemnly taken before the cortes, which I have ordered convoked in conformity with said constitution and in the manner therein provided. The individuals designated for this council are the Reverend Father in Christ Cardinal of Borbon, archbishop of Toledo, president; Lieutenant-General Don Francisco Ballesteros, vice-president; the Reverend Bishop of Valladolid de Mechoacan, Don Manuel Abad y Queipo, Don Manuel Lardizabal, Don Mateo Valdemoros, Don Vicente Sancho, the colonel of engineers, Count of Taboada, Don Francisco Crespo de Tejada, Don Bernardo Tarrius, and Don Ignacio Pezuela. All the dispositions that emanate from the government, until the constitutional installation of the cortes, shall be submitted to this council (*junta*) and promulgated with its approval.

You will see that it is understood in all the kingdom, to which it will be communicated for prompt and immediate promulgation and observance.

Decree of March 9, 1820.

To the Department of Grace and Justice:

In order that the constitutional system which I have adopted and sworn to support may have the rapid and uniform development that is expected, I have resolved, after hearing the council and approving its recommendation, that elections be held for *constitutional alcaldes* and common councils immediately in all the towns of the monarchy, in strict conformity with the provisions of the political constitution sanctioned at Cadiz and with the decrees that emanate therefrom and establish the manner and form of holding said elections.

You will see that it is understood, and give the necessary orders for its observance.

These decrees put matters in 1820 back where they were in 1812. As the constitution abolished the intendants absolutely, either the disposition of lands reverted to the provincial councils under the decree of January 4, 1813, or there was at that time no official or official body with authority therefor. The next epoch of the government begins with the declaration of independence on February 24, 1821, in the form known as the Plan of Iguala. This revolution was successfully terminated and the declaration of independence made good by the revolutionary forces under general Iturbide entering the City of Mexico on September 27, 1821. During the period between the promulgation of the Plan of Iguala as the declaration of independence and the capitulation of the City of Mexico on that date, the treaty of Cordoba was signed by viceroy O'Donoju and general Iturbide, dated August 24, 1821, looking to the independence of Mexico. This treaty, however, was afterwards rejected by the Spanish government. The plan of Iguala has but little bearing upon these questions, except the thirteenth article thereof, which says, "Their persons and property shall be respected," referring to the preceding article thereof, which is in regard to the inhabitants of the empire who were declared to be citizens. It may be remarked that this provision is only declaratory of what is recognized by all civilized nations without any specific announcement to that effect.

The declaration of independence having been made good by the capitulation of the City of Mexico, it is contended on behalf of the government that all authority existing

in or exercised by officials for the disposition of the public lands ceased to have any further life unless specifically continued in force. On October 5, 1821, an order was promulgated by the provincial council of the empire, as follows (Reynolds, 95):

The sovereign provincial council of government of the empire of Mexico, considering that from the moment it solemnly declared its independence from Spain all authority for the exercise of the administration of justice and other public functions should emanate from said empire, has seen fit to habilitate and confirm all authorities as they now are, in conformity with the Plan of Iguala and the treaty of the village of Cordoba, for the purpose of legalizing the exercise of their respective functions.

It will be seen by this decree that it was understood by all the officers that the offices and powers that had theretofore existed ceased from the date of the declaration of independence, February 24, 1821, which is in harmony with the decisions of this court in *United States v. Vallejo* (1 Black, 541) and *More v. Steinbach* (127 U. S., 71-80), before referred to, and in *Leese & Valejo v. Clarke* (3 Cal., 17-23), wherein the court says:

On the 24th of February, 1821, the relation between Mexico and Spain ceased, and the sovereignty became vested in the Mexican nation; and since that time no valid alienation could be made in any of the territories of Mexico except by an act of Mexican sovereignty. The royal decrees, regulations, and usages ceased to have any effect whatever as to subsequent grants of lands.

This point was determined by the Mexican congress in a case which arose shortly after the independence of the government, and has ever since

been acquiesced in. On the 17th of January, 1821, the elder Austin obtained an inchoate grant of lands from the royal governor of Texas. On the 19th of August the Mexican governor of that province (Martinez), assuming the powers properly exercised by the royal governors, modified the grant in favor of the younger Austin.

Had the royal laws and usages still continued to retain their force, the acts of Martinez would have been valid, but the Mexican government, at the same time it recognized the act of the royal governor as valid, because done before the change of sovereignty, refused to confirm the act of its own governor, done after the change, on the ground that the sovereignty could be exercised only by the Mexican nation. The subject attracted public attention, and the Mexican congress were about passing a general law in relation to the alienation of public lands when Iturbide forcibly dispersed the members of that body and caused himself to be proclaimed emperor.

But, as suggested in the earlier part of this brief, this decree does not continue in force the laws for the disposition of the public lands, whatever they may have been. However, if such an extreme construction were placed upon this decree as to hold that the laws for the disposition of the public lands, as they existed at the date of independence, were continued in full force, it is clear that the ordinance of intendants ceased to exist upon the readoption by Ferdinand VII of the constitution of 1812.

The provincial council, provided for by the Plan of Iguala, consisting of thirty-six members, was at once formed, and appointed a regency of five persons, with general Iturbide as president and commander in chief of the army and navy. A congress was elected on February

4, 1822, which took the place of the provincial council, and proceeded with the formation of a new constitution. A struggle commenced between that congress and general Iturbide which culminated in the election of Iturbide as emperor on May 19, 1822, and he was crowned on July 1, 1822. (*Leyes Fundamentales*, 92-93; Reynolds, 31-32.)

On October 30, 1822, emperor Iturbide dissolved that congress by force and created in its place the national instituent council, which was installed November 2, 1822. This instituent council on January 3, 1823, provided for the disposition of the public lands by what is known as the colonization law of Iturbide, and on the next day it was promulgated by emperor Iturbide. (Reynolds, 100-105.) This law provides for two kinds of grants—one to promoters (*impressarios*) who should bring two hundred families under contract, and the other to individuals, which were to be made by the common councils (*ayuntamientos*). The provisions for grants of land to be made by the *ayuntamientos* had its origin in the constitution of 1812, wherein the manner of disposing of lands through these bodies originated. I do not believe that it can be successfully shown that this law did not by virtue of its terms and its departure from the old laws necessarily repeal them *in toto*.

Thus we have four distinct departures from the ordinance of intendants; so that at this time, whatever they may have claimed for themselves, the intendants could not claim any lawful authority to interfere with the disposition of the public lands of the empire. These departures are:

1. By the adoption of the constitution of March 18, 1812, and the promulgation of the law of January 4, 1813. (Reynolds, 79-87.)

2. By the resolution of the council of the Indies, before a full board at Madrid, December 23, 1818. (Hall's Mexican Law, sec. 188, p. 76.)

3. By the decrees of Ferdinand VII reestablishing the constitution of 1812 and convoking the cortes, March 6, 7, 9, 1820. (*Supra*.)

4. By the imperial colonization law of January 4, 1823, above referred to.

Emperor Iturbide and his government commenced to go out of existence by the decree of March 31, 1823, upon the reassembling of the old congress, wherein it was declared that the executive power in existence in Mexico since the 19th of May last (1822) until that time ceased (Reynolds, 106), and on April 8, 1823, the congress declared that the coronation of general Iturbide was an act of force and violence and therefore void, and they provided for his enforced departure from the nation. (R., 107.)

On April 11, 1823, the constituent congress instructed the executive to take no further steps in relation to the colonization of the public lands until a law on that subject should be enacted by the instituent council. It would seem most reasonable that, owing to the chaotic condition of the government, such a decree was prudent and was intended to withdraw from all the officials any power to dispose of the public lands, including the chief executive power. On January 31, 1824, the constituent

congress promulgated what is known as the constitutive act, under which the government was to continue until the new constitution was framed and established. Article 1 provides that "The Mexican nation is composed of the provinces comprised in the viceroyalty formerly called New Spain, in what was called the captaincy-general of Yucatan, and in the commandancies-general of the internal provinces of the east and of the west." (Reynolds, 116.)

Article 7 designates the states which compose the federation. (Reynolds, 116.)

This article is the beginning of the subdivision of the nation of Mexico which has given rise to a very great deal of spirited contention as to the origin of the rights of the states as they are finally defined under the constitution.

On August 4, 1824, the constituent congress promulgated a law classifying the revenues, which contains twenty-two articles. The first ten of these define the revenue that shall be retained by the nation.

Article 11 provides that "the revenues not contained in the foregoing articles belong to the states."

Article 9 is as follows:

National property, in which is included that of the inquisition and temporal property of the clergy, or any other rural or urban property that belongs or shall hereafter belong to the public exchequer.

This article, I contend, reserves the public lands to the nation, if they were intended to be included in the revenues, which I seriously doubt.

On August 18, 1824, what is known as the colonization law (Reynolds, 121) was passed, the second article of which is as follows:

The object of this law is those lands of the nation which, not being private property nor belonging to any corporation or town, can be colonized.

The third article is as follows:

For this purpose the congresses of the states shall enact as soon as possible laws or regulations for the colonization of their respective demarcations, in strict conformity with the constitutive act, the general constitution, and the rules established in this law.

These two articles are inconsistent with the construction sought to be placed upon articles 9 and 11 of the decree of August 4, 1824, classifying the general and special revenues. If the vacant public lands of the nation within the states had been transferred to them by any provision of this law, there would have been no necessity for the declaration made in the second article of the colonization law.

The third article of this law (*supra*) confers upon the states the right only to *regulate* the colonization of the public lands of the nation lying within their respective demarcations, subject to the control of the nation itself, as expressed in the constitutive act, the constitution, and the rules established under this law, and subject necessarily to the future control of the sovereign will of the nation. This is the only declaration wherein the nation delegated to the states any rights or powers over the

vacant public lands, and, as will be observed, it is not of such an unlimited character as would pass to the states the title thereto, but simply authorized them to regulate the colonization thereof, subject to the right of the national government, and as its agent, if I may use that term. There is no inference in this law that the state could dispose of any portion of the lands for the purpose of its revenue, and if the state did from time to time seek to pass the absolute title to any portions of the same by sale of the land for revenue it was without authority and in excess of the powers conferred on it, to wit, to regulate the colonization of the national public lands within their demarcations under the control of the national government.

On September 21, 1824, the office of commissary-general was created. The law is as follows (Reynolds, 123):

ARTICLE 1. So far as concerns the federation, the officers of general and local depositories, and all revenue employes that have been retained by the federation, are discontinued.

2. From the intendants and other discontinued officers the government shall appoint, in each state where it appears necessary, a commissary general for the different branches of the exchequer, public credit, and war.

3. These commissaries shall be, in the state or states and territories of their demarcation, head officers of all branches of the exchequer. Consequently they are responsible for the prompt execution of the laws that govern their administration, and all employes thereof shall be subordinate to them.

4. They shall collect and disburse, under the laws and orders of the government, the proceeds from the revenues and contingents of the state.

5. The revenue on powder, salt deposits, the proceeds from the revenue on tobacco that belong to the federation, national properties and vacant lands (*cascos*), contingents, customs, tolls, and all the branches pertaining to the public credit, shall be administered directly by the commissary. The revenue on tobacco in the places where raised, that from the maritime customs, from the mail and lotteries, shall continue under their special administration, subordinate in all respects to the commissaries.

Under the former laws which we have been investigating the intendants were continued as the auditing or fiscal officers in the various provinces, but the power to dispose of the public lands had, as we have seen, been taken away, and the creation of the office of the commissary-general, conferring upon him very much the same powers and duties as were exercised by the intendants, nowhere even impliedly recognized the power to dispose of the public lands of the nation, or to make composition with parties who had attempted to acquire the lands from other officials, or to extend titles for lands based upon proceedings (*expedientes*) taken by other officials prior to the creation of his office; nor is there anything in this law of such a general nature and character as would permit him to make an admission against his government. He was purely and simply a revenue officer to disburse the revenues which might come to him through sources named in the law.

It is not shown what formal proceeding was necessary to be taken in order that a commissary-general, might extend a title, and if the contention made by counsel for appellants in the state grant cases, that the title to the vacant public lands passed to the states by virtue of the act of August 4, 1824 (Reynolds, 118), upon what ground can it be contended that the commissary-general, created by the law just quoted as purely and simply a revenue officer, could dispose of the public lands of the nation within the demarcations of the states for any purpose?

I think that my construction of the powers of the commissary-general in relation to the disposition of the public lands of the state is correct, for the reason that the vacant public lands within the states were not intended at that time to be disposed of by either the nation or state for revenue, but it was the intention of the nation to retain them for colonization, which was to be regulated as to all the vacant public lands within the demarcations of the respective states by the states themselves, but under the control of the national government, as fully appears by articles one and three of the colonization law of August 18, 1824. (Reynolds, 121.)

Juan Miguel Riesgo, the commissary-general of the national government assigned to the state of the occident, must have known of the existence of the law creating his office, and on May 15, 1825, must have thought he understood its provisions and the powers conferred upon him; but it is apparent that he did not believe that the decree of September 21, 1824 (creating the office of commissary-general), authorized him to extend title in

this or any other case, otherwise he would have recited in the preamble attached to the *testimonio* in this case or in the grant itself that he claimed some right to perform this act in 1825 by virtue of this law. He adds a statement, however, which appears both in the preamble and in the granting clause, that he draws his authority from article 81 of the ordinance of intendants of December 4, 1786, and the royal instructions of October 15, 1754, and I am satisfied that we have clearly shown that in 1825 the ordinance of intendants had long ceased to be in force in Mexico.

I have already called attention to four departures from this ordinance of intendants, and I now desire to call attention to the fifth departure therefrom, which was by the decree of August 18, 1824, the sixteenth article of which is as follows (Reynolds, 122):

16. The government, under the principles established in this law, shall proceed to the colonization of the territories of the republic.

The regulations which the chief executive was to issue under this law for the colonization of the territories were not issued until November 21, 1828. (Reynolds, 141.) The third article of the colonization law delegates to the states the power to regulate the colonization of the public lands in strict conformity with the constitutive act, the general constitution, and the rules established in that law, and necessarily subject to the control of the national government.

It is contended by counsel for appellants, under the sixteenth heading of his brief, page 21: "The commissary-general was the head officer of all the branches of

the Mexican exchequer (treasury). Decree of September 31, 1824." (Reynolds, 123.) This proposition is to be qualified for the reason that he was the fiscal officer of the Mexican nation in the state to which he might be assigned, but the chief officer of the Mexican exchequer was "*La Secretario del Despacho de Hacienda.*" Article 96 of the instructions of December 22, 1824 (referred to by counsel in his brief), is as follows (2 Galvan Nuevo Collection de Leyes y Decretos Mejicanos, p. 847) :

La secretaria del despacho de hacienda, es el conducto por donde los comisarios generales se han de entender con el supremo gobierno, en todo lo que va prevenido en esta instruccion y se ofresca relativo a sus funciones y atribuciones.

The secretary of the department of the treasury is the channel through which the commissaries-general are to deal with the supreme government in everything that is provided in this instruction, and that course with respect to their functions and powers.

The second proposition announced is : "The instructions issued to the commissaries-general, December 22, 1824, authorized him to issue final title to this grant," and he cites 2 Galvan, etc., 836-846. I can not concur in this proposition, either as contained in express terms in said instructions, or agree that the same can be inferentially concluded from anything contained therein. Certain articles of those instructions are found in translation on pages 49-50 of appellant's original brief in this case. Although the translations are rather free, still I contend there is nothing in them to justify the conclusion that the commissary-general was authorized to issue final title for this or any other grant of land.

As explanatory of the powers and duties of the various commissaries-general there were issued by the secretary of the department of the treasury on March 5, 1825, blank forms for monthly and quarterly reports of the receipts and disbursements of that officer and as to all moneys received from the sources over which his office exercised jurisdiction. These forms were issued by Esteva, secretary of the treasury, the same officer who issued the instructions of December 22, 1824, referred to by counsel, and will be found in 2 Galvan, etc., 269-276. On page 276, under form No. 6, one of the items upon which the commissary-general was required to report was "*bienes y fincas nacionales*." If counsel for appellants should contend that these words will include the receipts from the sale of the vacant public lands, there would be more foundation for their contention that the commissary-general was authorized to dispose of the public lands and that his authority therefor was to be found in this recital than by virtue of the instructions issued by the secretary of the treasury on December 22, 1824; but a consideration of the fact that the vacant public lands were set aside for colonization, and not revenue, by the law of August 18, 1824, under the direction of the chief executive when located in the territories, and under the laws of the states when located within their demarcations, forces the conclusion that such a provision in these reports could only have reference to the possibility that the national government might thereafter, as it had authority to do, provide for the sale of any of these public lands, and if it did so the proceeds would come

into the hands of the commissary-general to be accounted for to the secretary of the treasury, if the vacant public lands were subject in any manner to the provisions of the revenue law. Thus my construction is borne out by the subsequent action of the Mexican nation when it created a general department of revenues by the decree of January 26, 1831 (Reynolds, 151), establishing commissariats and commissaries by the decree of May 21, 1831 (Reynolds, 153), and issued regulations for carrying them in effect on July 7 and July 20, 1831 (Reynolds, 155-161).

In my brief in the case of *United States v. Coe*, argued at the last term of this court and remanded to the docket for reargument, being No. 8 on the present call, these laws and regulations are referred to and discussed (pp. 91-95). It will there appear that in these laws and regulations the sale of the vacant public lands as such is not provided for, but if they form part of the revenues or part of the property assigned to the treasury for the purpose of obtaining revenues, then they fall within the general provisions of these laws, but if they are still withheld for the purpose of colonization alone, then in no sense did they come within the jurisdiction of the revenue department or its officials. The decree of April 6, 1830 (Reynolds, 148), in relation to colonization and commerce, convinces me that the national government at that time did not consider the vacant public lands as part of the revenue system, but a part of the colonization system; and, desiring to resume unlimited control over the same, sought to get the consent of the states to a release of

their right to *regulate* the colonization of the public lands within their demarcations, which they had acquired by virtue of the third article of the colonization law of August 18, 1824. Whether the consent of the states was obtained or not, by virtue of its sovereign power reserved over the lands at the time the right to regulate colonization thereof within the restrictions prescribed was given to the states, the national government proceeded to carry all of the property of the nation into the revenue system by virtue of the law of January 26, 1831.

Putting the most liberal construction upon all the laws and regulations that could possibly have reference to the public lands, I am unable to understand how the construction is to be drawn therefrom that the commissary-general, on May 15, 1825, the date of the issuance of final title in this case, had power to issue titles in the name of the republic of Mexico, based upon old *expedientes* that had been formed by officials under another government, and after their powers over lands must necessarily have ceased either by operation of law or by direct repeal.

Recurring again to the proposition that between August 18, 1824, the date of the colonization law, and January 26, 1831, the date of the decree creating a general department of revenues, the vacant public lands of the nation situated in the territories and states were subject alone to the terms of the colonization law, I respectfully refer to the instructions of December 22, 1824, so much relied upon by counsel in this case. Article 5 thereof provides:

There shall be established commissariats-general in the States of Queretaro, Chihuahua, Coahuila, and

Texas, whose capital is Saltillo; New Leon, Tamaulipas, Tabasco, and the territories of Upper and Lower California and Santa Fe of New Mexico, and the government shall prescribe the terms in which they are to be conducted.

It is perfectly well understood that in the territory of New Mexico and in the Californias the public lands were not considered, at least after August 18, 1824, as forming any part of the revenue system of the Mexican republic, and on November 21, 1828, the executive provided the rules and regulations for the disposition of the public lands within these territories and conferred the right not upon the commissaries, but upon the governors and territorial deputations, and there is no more ground for contending that the vacant public lands constituted a part of the revenue system of the national government when they were located in the state of the Occident than when they were located in the territory of New Mexico. Before the authority of Juan Miguel Riesgo, commissary-general assigned to the state of the Occident, to extend this title is recognized by this government it should be made to appear that he had some reasonably well-defined law, order, or decree sufficient for that purpose. The first subdivision of section 13 of the act creating the Court of Private Land Claims and conferring jurisdiction upon it provides that "no claim shall be allowed that shall not appear to be upon a title lawfully and regularly derived from the government of Spain or Mexico, or from any of the states of the republic of Mexico having lawful authority to make grants of land," etc.

I have undertaken to ascertain and determine, as best I could, the various officials and official bodies who were clothed by the laws and regulations with power to bind the existing Mexican government in the disposition of its public lands, from December 4, 1786, to January 26, 1831. Testing the foregoing investigation by the general rule of law that a grant made by one without lawful authority to make it is void in all governments, and by the limitations placed upon the judicial branch of the government by congress in subdivision one of article 13 of the act of March 3, 1891, the action of Juan Miguel Riesgo in extending this title should be pronounced a nullity.

The petition for this grant (R., 117) is directed to the intendant governor and is undated, but the order of the intendant is dated at Arizpe, May 29, 1821, three months after the declaration of independence at Iguala. The various steps set out in the proceedings conform substantially to those appearing in nearly all of the grants initiated about that time, and if, as contended by counsel for appellants, the ordinance of intendants was still in force, the proceedings had not reached such a stage under that ordinance as to vest an equity in the petitioner upon which he could, as a matter of right, demand a title from either the Spanish or Mexican governments. It is contended that upon the third offer of sale (*almoneda*) the payment of the purchase money vested an equity in the petitioner upon which he had a right then and has a right now to demand the title. It is the contention of the Government, that no equity vested in

the petitioner after the purchase money was paid, nor until the *expediente* had been forwarded to the superior board of the treasury and approved by it. Upon that approval taking place, an equity vested only so far as the proceedings had been approved by the superior board of the treasury, and the money which had been paid to the intendant was subject to be refunded upon its disapproval. In the "Official Report on the Condition of the Archives or Records of the Title to Land Grants in Arizona," etc., made by Special Agents Will. M. Tipton and Henry O. Flipper, 1896, page 93, No. 152, San Rafael de la Noria grant, proceedings were begun on March 29, 1813; the *expediente*, regular in form, was ordered to be sent to the superior board of the treasury in Mexico on November 19, 1813; September 16, 1816, the intendant sent it to the commandant-general at Durango, and in October of the same year it was sent to the viceroy at Mexico; November 22, 1816, the viceroy referred it to the attorney of the royal treasury; December 31, 1816, the attorney recommended that the *expediente* be approved for four *sitios* instead of five, as the amount of land was limited to four *sitios* for one person, and husband and wife were one; the viceroy then referred the *expediente* to the superior board of the treasury, which approved it March 13, 1817; it was then sent back to the intendant at Arizpe and proceedings had to segregate the four *sitios* from the original five and pay back the value of the one rejected. A part of this *expediente* is missing, and the final result could not be determined.

Referring to the ordinance of intendants, it appears that originally article 81 (Reynolds, 60, 61) provided for two transmittals to the superior board of the treasury: First, the *expediente* should be transmitted for approval, or for such action as it might deem proper to take, before any title could possibly be issued. No equity could vest in the petitioner at that time because the whole proceeding was subject to be disapproved and annulled, which is inconsistent with the idea of a complete vesture of an equitable interest upon which a right could be based. If the *expediente* was approved it was returned to the intendant, title was issued, and a *testimonio* of the *expediente* attached, forming a *titulo*, which was returned to the superior board of the treasury for its approval, and if again approved, returned to the intendant in order that a *toma de razon* might be taken, and then delivered to the party as evidence of title. The amendment made by the decree of March 23, 1798, dispensed with the second transmittal in cases where the value of the land did not exceed two hundred dollars, upon the payment of a two per cent tax, but the first transmittal was not to be excused and was made mandatory before any title should issue. This was reaffirmed by the decree of February 14, 1805.

The *expediente* in this case appears to have been concluded on December 12, 1821 (R., 21), and if the intendants were still recognized as having authority to exercise the powers conferred upon them by the ordinance of intendants, and if the superior board of the treasury was still in existence and capable of exercising its func-

tions, as contended by counsel for appellants, no reason whatever is shown why this *expediente* could not have been transmitted to the superior board for approval.

It is contended by counsel that it was the duty of the intendant to transmit the *expediente* to the superior board of the treasury, and that his failure to do so could in no wise prejudice the petitioner. Admitting that the failure of the intendant to transmit the *expediente* to the superior board of the treasury for such action as might be deemed proper in the premises did not prejudice the petitioner, still this failure could not supply the action required by law to be taken by the superior board. If an equity vested in the petitioner upon the conclusion of the *expediente* by the intendant, that equity still remains; but if it required the approval of the superior board of the treasury to vest an equity in the petitioner, upon which the claimant could demand a transfer of the full title, then the failure of the intendant to transmit the *expediente* could not supply that defect. When the official title was issued by the commissary-general on May 15, 1825, it does not appear, either by the preamble or the grant (patent), that the petitioner for the original grant requested this official to violate the law and extend him a title, nor does he purport to have done so because of any request on behalf of anyone or by virtue of any law or regulation promulgated subsequent to independence, and the proposition (substantially as contended by appellants) that, because this officer has in a number of other instances, under similar circumstances, extended titles of this character, we are to assume

that he had lawful authority therefor, is expanding the doctrine of presumption as to the acts of officials farther than I understand the courts of the country have gone, and farther than I believe they are authorized to go under the limitations imposed upon them by the act of March 3, 1891, conferring jurisdiction upon the Court of Private Land Claims. It is evident that the intendant, by the time he had concluded the *expediente*, had some doubts as to his powers in the matter, otherwise he would have attempted to transmit the *expediente* to the superior board of the treasury. It is also apparent that the petitioner in the case thought little of his purchase, or he evidently could have induced the intendant to transmit, or permit to be transmitted, his *expediente* to the superior board of the treasury for its approval.

It appears that commissary-general Riesgo did not exercise the right to extend this title upon an *expediente*, made up under laws in existence prior to the creation of his office and conferring jurisdiction upon him as a revenue officer, because of the receipt of any revenues due the national government, for it is shown that the payments required under the ordinance of intendants had been made to the intendant, and no authority has been called to the attention of this court or the court below, wherein a commissary-general was authorized to extend a title based upon an ancient *expediente*, when the purchase money had been paid to the former government.

To the best of my ability I have endeavored to carefully refer the court to all the laws and regulations bearing upon the disposition of the public lands within the

period from December 4, 1786, to January 26, 1831, except those passed by the state of Sonora, and I feel that I have reasonably well shown, as a matter of fact, that neither the intendants nor the commissaries-general had authority to dispose of the public lands, or to extend titles under ancient laws.

It is contended by the government that this case comes within the rules and principles announced by this court in the case of *Ainsa v. United States* (161 U. S., 208), Los Nogales de Elias grant; that it is a grant by quantity and not by outboundaries, and that the same has not been located within the outboundaries, as claimed to have been surveyed by the original surveyor. Assuming that the ordinance of intendants was in force at the time the *expediente* was made up, the officials did not have authority to dispose of lands by metes and bounds, but only by quantity, and were required to fix the value for certain characters of land, and attributing to them an integrity which I do not believe they deserve, it must follow that the intent was to make a grant by quantity. The petition for the grant asks for two *sitios* (8,676.92 acres). The petition filed in the Court of Private Land Claims alleges that the area of the grant is 12,147.69 acres. The final claim made, based upon Roskrug's survey with the *expediente* before him, was for 22,925.87 acres. The exact amount of land appraised, advertised, sold, and auctioned off was one and three-quarters *sitios* (7,591.67 acres), and it is now insisted that it was a grant *ad corpus* consisting of 22,925.87 acres. The only manner in which Mr. Roskrug was able to locate this grant was by the natural

objects called for as outboundaries, including therein, according to his survey, 22,925.87 acres instead of 7,951.67 acres or the one and three-quarters *sitios*. It may be claimed that one and three-quarters *sitios* can be surveyed because the initial point can be found, and such could have been the case for the seven and a half *sitios* and a few short *caballerias*, in the Ainsa case referred to, for the initial point could be found, to-wit, the north Cruz monument on the north line of the Casita grant, situated on the road to Tubac, but in neither instance will a survey by quantity include all of the land within the outboundaries as designated by natural objects. It is apparent that the quantity called for was located in neither case at any specific place within these outboundaries of the greater area, and therefore, under the sixth article of the treaty of December 20, 1853, such grants are not entitled to recognition.

The officers were not authorized to grant lands *ad corpus*, but only *ad mensuram*, and not then until the character, value, and the needs of the applicant, together with his ability to use it all for the purposes intended, had been made fully to appear. (Reynolds, 68. Decree of February 14, 1805.)

Viceroy Iturrigaray ordered that the owners should settle and cultivate their lands within one year. Decree of August 29, 1805 (Reynolds, 76), articles 7 and 8, Imperial Colonization Law of January 4, 1823. (Reynolds, 100.)

There are two general methods of disposing of lands, viz, *ad mensuram* and *ad corpus*.

Lands disposed of *ad corpus* include all lands within the metes and bounds described in the papers conveying them. On the contrary, lands disposed of *ad mensuram* do not include any but the precise quantity attempted to be conveyed, regardless of the metes and bounds or natural objects described in the titles. Any overplus land within the metes and bounds described is variously known in Mexican and Spanish law as *demasias*, *excedencias*, *excesos*, and *sobrantes*.

The Crown of Spain, and afterwards the Mexican government, always claimed and disposed of these overplus lands.

The first Spanish law we find on overplus lands is Law XIV, Title XII, Book IV, of the compilation of the Indies, of Philip II, of November 20, 1578; March 8, 1589, and November 1, 1591, as follows:

Inasmuch as we have fully succeeded to the seigniorship of the Indies, and inasmuch as the vacant lands, soils and grounds that have not been granted by the Kings, our predecessors, or by Us, or in Our name, belong to our royal patrimony and crown, it is necessary that all the land, that is held without just and true titles, be restored to us, according and as it belongs to Us, so that, reserving, before all things, what should appear to Us, or to the viceroys, audiences and governors, to be necessary for parks, town commons, municipal domains, pastures and vacant lands for the places and councils that are populated, as well with regard to what concerns the future and the increase they may have, and allotting to the Indians what they might well need for farming and for making their plantations and for stock-raising, confirming them in what they now

have and giving them again what is necessary, all other land may remain and be free and unburdened to grant and dispose thereof at our will. For all of which we order and command the viceroys and presidents of the pretorian audiences, to set, when it shall appear to them convenient, a proper term for the possessors to exhibit before them and the ministers of their audiences, whom they shall appoint, the titles of lands, stock farms, Indian farms, and *caballerias*, and, after protecting those who hold under good titles and instruments or just prescription, the rest be returned and restored to Us, to dispose thereof at Our will.

Mr. Orozco, after quoting this law, Vol. II, page 1007,

says:

And Law XVII of the same book and title expressly declares that the public lands are a part of the royal exchequer. The same declaration is found in Chapter XIII of the royal instruction of October 15, 1754.

Relying on the texts transcribed, we can set down the principle:

The public lands in the republic of Mexico are imprescriptible.

Mr. Orozco, at page 45, Vol. II, of his work on Legislation and Jurisprudence on Public Lands, says, after quoting this same law:

This law contains the important, clear, and explicit declaration that the public lands are the property of the nation, which, in the epoch when this law was made, was represented by the Royal Crown or by the Imperial Scepter, in accordance with the political institutions of those times. Neither before nor after this law does there exist any declaration as

solemn and express as the one it contains of the eminent dominion of the state or public power over the territory in which the state exercises its sovereignty. * * * This most important law has served as the basis and juridical supposition not only to all subsequent regulations, such as the royal instruction of October 15, 1754, and the law of July 22, 1863, but even to clause 24, article 72, of the political constitution of the republic. It also establishes the principle of the official investigation to discover and habilitate public lands and the revision of titles of lands issued by the sovereign, which serves as a legal precedent to article 1 of the law of May 31, 1875, and to article 18 of the law of December 15, 1883, and serves, up to date, as a juridical foundation to the investigations and proceedings followed in this respect by the companies which are delimiting public lands.

Philip IV, in Madrid, on May 17, 1631, issued the following *cédula*, Law XV, Title XII, Book IV :

Considering the greatest benefit of our vassals, we order and command the viceroys and governor-presidents to make no innovation in the lands composed by their predecessors, but to leave the owners in peaceable possession thereof; and that those who have entered and usurped more than what belongs to them under their titles be admitted, in regard to the excess, to moderate composition, and that new titles be issued to them, and that they cause all those lands that are in condition for composition to be sold absolutely at public sale, after due publication, and be sold to the highest bidder, and be given to them at the rate of a redeemable quitrent, according to the laws and decrees of these kingdoms of Castile.

Philip IV, June 30, 1646, Law XIX, Title XII, Book IV, ordered—

That he be not admitted to the composition of lands who has not possessed them ten years, although he alleges that he is in possession thereof, because this pretext alone is not sufficient; and that communities of Indians be admitted to composition, with preference over all other private persons, giving them every convenience.

The royal instruction of October 15, 1754, also provides for the acquisition of overplus lands in its article 7. (See this instruction, Reynolds, p. 54.)

There is no other federal law on overplus lands till July 22, 1863, articles 5, 6, 7, and 8 of which provide for the acquisition of such overplus lands.

Article 4 of this law cedes to the states one-third of the price received for public lands within their boundaries. It may be asked why this cession was made. Mr. Orozco, at page 349, Vol. I, of his work, answers it as follows:

The law of 1863 might have had a reason, taking into account the circumstances, for holding toward the states the considerations revealed in its article fourth. Mr. Juarez, who promulgated that law, personified the federal republican party, and everything that approximated to centralism or imperial government had to be prejudicial to his banner. It was then necessary not to wound, either immediately or remotely, the susceptibilities of the states, and, perhaps, from that necessity arose article 4 of the law of 1863, for in those times the states still had susceptibilities, and susceptibilities that were sometimes dangerous.

Lands that formed part of the revenue systems of either Spain or Mexico were imprescriptible, and the continuous possession claimed for the grantee will not enable him to hold in excess of the *cabida legal*, as the lands were part of the revenues under the old system.

An exact statement of the condition of the archives at Hermosillo is to be found in the official report of Special Agents Tipton and Flipper, before referred to. Upon the *expediente* of this grant there is an unsigned indorsement which states that final title was issued on May 15, 1825. There is in the archives a certified copy of the *testimonio* of the title, made at Ures, July 30, 1855, and upon the same is the following indorsement (agents' official report, p. 21):

Land Commission of the Agency of Public Works
in the Department.

This commission having compared the *testimonio* of title presented by Don Joaquin V. Elias, proprietor of the ranch known as San José de Sonoita, with the original, which he also presented, found it correct, and, therefore, it is returned to him, that he may appear, with this copy, before the agency reestablished in Hermosillo, having complied with article 2 of the law of July 7, 1854.

Ures, July 31, 1855.

(Signed) LUCAS DE LLAIN. [Rubric.]

This same indorsement appears in fifteen other grants wherein certified copies of the *testimonios* of title were made in 1855 (one being made in 1854), the numbers of which are given in the official report of the agents, page 2.

In 1895 I received information that after the promulgation of what is known as the decrees of Santa Anna, November 25, 1853, and July 7, 1854, an agent of the department of public works of Mexico was sent to Hermosillo for the purpose of investigating the archives and ascertaining their condition, and that a list of the *expedientes* had been made by him and a copy thereof left in the archives. In our former investigations we had never been able to discover any such document, nor was any information as to the likelihood of its existence disclosed to us. In 1896 I instructed Special Agent H. O. Flipper to go to Hermosillo and make a further investigation, and particularly I officially requested the keeper of the archives, Mr. Bartolomé Rochin, to aid him in ascertaining whether such a list existed. Mr. Rochin immediately found the list desired, but it failed to conform to exactly what I had been given to understand it was. It was a very large list, covering eight folio pages of tabulated matter, and the majority of the *expedientes* mentioned therein were of no value to us. I did not deem it advisable to expend the amount demanded for a certified copy. I instructed the special agents, however, to particularly examine this instrument, and the result of the same is embodied in their report, pages 1 to 3. It appears that there were in the archives at Hermosillo *expedientes* in the following Arizona grants: San José de Sonoita, San Ignacio de la Cano, San Rafael de la Zanja, San Bernardino, San Juan de las Boquillas y Nogales, San Rafael del Valle, Nuestra Senora del Carmen (a)

Beunavista, San Ignacio del Babocómari, and Agua Prieta; nine in all.

The *expedientes* in the following Arizona cases were not found in the list:

Aribac, Tres Alamos, El Sopori, Tumacacori, Calabazas y Heubabi, Reyes Pacheco, El Paso de los Algodones, and the Peralta grant.

This may throw some light upon the indorsement on the copy of the *testimonio* of this grant, before noticed. Evidently Santa Ana's decree of July 7, 1854 (Reynolds, 326), was in operation.

The effect of the decrees of Santa Ana of November 25, 1853 (Reynolds, 324), which was made pending the negotiations for the treaty, and that of July 7, 1854 (Reynolds, 326), has been fully discussed and briefed in the case of *United States v. Coe*, Algodones grant, No. 8 on the present docket, and I do not deem it advisable to again enter into the same, inasmuch as these two cases will probably be argued within a short time of each other.

In all the investigations that have been made we have yet to discover a single grant where the initiatory proceedings were commenced before the commissary-general, whose office was created by the law of September 21, 1824, and evidently in existence until April 17, 1837, although his powers and duties were changed from time to time.

In connection with this case I respectfully refer the court to the dissenting opinion of Mr. Justice Murray in

the case of the *United States v. Maish et al.*, for the confirmation of the San Ygnacio de la Canoa grant, No. 297. (R., 102.)

Respectfully submitted.

JOHN K. RICHARDS,
Solicitor-General.

MATTHEW G. REYNOLDS,
Special Assistant to the Attorney-General.



Statement of the Case.

ELY'S ADMINISTRATOR *v.* UNITED STATES.¹

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

No. 27. Argued March 15, 16, 1898. — Decided May 31, 1898.

The grant which is the subject of controversy in this case was one which, at the time of the cession in 1853, was recognized by the government of Mexico as valid, and therefore is one which it is the duty of this Government to respect and enforce to the extent of one and three fourths sitios.

In *Ainsa v. United States*, 161 U. S. 208, it was decided, with reference to such grants, that while monuments control courses and distances, and courses and distances control quantity, where there is uncertainty in specific description, the quantity named may be of decisive weight, and necessarily is so if the intention to convey only so much and no more is plain: and this case comes within that rule.

On October 19, 1892, proceeding under section 8 of the act of March 3, 1891, c. 539, creating the Court of Private Land Claims, 26 Stat. 854, the United States filed in that court a petition against Santiago Ainsa, administrator of the estate of Frank Ely, deceased, and others, alleging that said administrator claimed to be the owner through mense conveyances of a large tract of land in the Territory of Arizona, known as the Rancho de San Jose de Sonoita; that he had not voluntarily come into the court to seek a consideration of his title; that the title was open to question, and was in fact invalid and void; that the other defendants claimed some interests in the land, and praying that they all might be brought into court and be ruled to answer the petition, set up their titles and have them settled and adjudicated.

In an amended answer the administrator set forth the nature and extent of his title, and prayed that it be inquired into and declared valid. Reply having been filed, the case came on for trial, which resulted in a decree on March 30, 1894, that the claim for confirmation of title be disallowed

¹ The docket title of this case is Santiago Ainsa, administrator of the estate of Frank Ely, deceased, *v.* The United States.

Statement of the Case.

and rejected. The opinion by Associate Justice Sluss contains this general statement of the facts:

"On the 29th day of May, 1821, Leon Herreros presented his petition to the intendente of the provinces Sonora and Sinaloa, asking to obtain title to two sitios of land at the place known as Sonoita. The intendente referred the petition to the commander at Tubac, directing him to cause the tract to be surveyed, appraised and the proposed sale thereof to be advertised for thirty days.

"In obedience to this order the officer proceeded to make a survey of the tract, which was made on the 26th and 27th days of June, 1821, and on the completion of the survey he caused it to be appraised, the appraised value being one hundred and five dollars. Thereupon the proposed sale was advertised for thirty consecutive days by proclamation made by a crier appointed for that purpose, beginning on June 29 and ending on the 28th day of July, 1821. Thereupon, on the 31st day of July, 1821, the officer took the testimony of three witnesses to the effect that Herreros had property and means to occupy the tract. On October 20, 1821, the proceedings above mentioned being reduced to writing, were by the officer returned to the intendente.

"On October 25, 1821, the intendente referred the proceedings to the promoter fiscal for his examination.

"On November 7, 1821, the promoter fiscal reported to the intendente the regularity of the proceedings and recommending that the land be offered for sale at three public auctions, and thereupon the auctions were ordered to be held.

"The first auction was held on November 8, 1821, the second on November 9, and the third on November 10, 1821.

"At the conclusion of the third auction the land was struck off to Herreros at the appraised value by the board of auction, of which board the intendente was a member and the president.

"All these proceedings being concluded, on the 12th day of November, 1821, Herreros paid to the officers of the treasury the amount of the appraisement, together with the fees and charges required to be paid, and with his concurrence the

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intendente and the auction board ordered the expediente of the proceedings to be reported to the junta superior de hacienda for its approbation, so that when approved the title might issue.

"There is no evidence that the sale was approved by the junta superior de hacienda.

"On the 15th day of May, 1825, Juan Miguel Riesgo, commissary general of the treasury, public credit and war of the Republic of Mexico for the State of the West, issued a title in the usual form purporting to convey the land to Herreros in pursuance of the proceedings above referred to and professing to act under the authority of the ordinance of the intendentes of Spain of the year 1786."

The conclusion reached was that "the entire proceedings set forth in the expediente of this title and the final title issued thereon were without warrant of law and invalid." Two of the justices dissented. Thereupon the administrator secured an order of severance and took a separate appeal to this court.

Mr. Rochester Ford and *Mr. James C. Carter* for appellant.

Mr. Special Assistant Matthew G. Reynolds for appellees.
Mr. Solicitor General was on his brief.

MR. JUSTICE BREWER, after making the above statement, delivered the opinion of the court.

The controversy in this case does not turn upon any defect in the form of the papers. The contentions of the Government are that the officers who assumed to make the grant and to execute title papers had no authority to do so, and upon this ground it was held by the Court of Private Land Claims that the grant was in its inception invalid. Secondly, that if a valid grant was made it was one of quantity, and should be sustained for only that amount of land which was named in the granting papers and paid for by the grantee.

It appears that the proceedings to acquire title were initi-

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ated by a petition to the intendant, or intendente, as he is called in the opinion of the court below, of the provinces of Sonora and Sinaloa, on May 29, 1821; that, so far as that officer was concerned, they were concluded and the sale completed on November 12, 1821. Nothing seems to have been done after this date until May 15, 1825, when the commissary general of the Republic of Mexico for the State of the West on application issued a title in the usual form. So the question is as to the power of these officers to bind the government of Mexico.

Few cases presented to this court are more perplexing than those involving Mexican grants. The changes in the governing power as well as in the form of government were so frequent, there is so much indefiniteness and lack of precision in the language of the statutes and ordinances, and the modes of procedure were in so many respects essentially different from those to which we are accustomed, that it is often quite difficult to determine whether an alleged grant was made by officers who, at the time, were authorized to act for the government, and was consummated according to the forms of procedure then recognized as essential. It was undoubtedly the duty of Congress, as it was its purpose in the various statutory enactments it has made in respect to Mexican titles, to recognize and establish every title and right which before the cession Mexico recognized as good and valid. In other words, in harmony with the rules of international law, as well as with the terms of the treaties of cession, the change of sovereignty should work no change in respect to rights and titles; that which was good before should be good after; that which the law would enforce before should be enforceable after the cession. As a rule, Congress has not specifically determined the validity of any right or title, but has committed to some judicial tribunal the duty of ascertaining what were good and valid before cession, and provided that when so determined they should be recognized and enforced.

Of course, in proceeding under any particular statute the limitations prescribed by that statute must control, and what-

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ever may be the obligations resting upon the nation by virtue of the rules of international law or the terms of a treaty, the courts cannot pass beyond such limitations. In the case of *Hayes v. United States*, just decided, 170 U. S. 637, we called attention to the fact that in the act creating the Court of Private Land Claims there was a prohibition upon the allowance of any claim "that shall not appear to be upon a title lawfully and regularly derived from the government of Spain or Mexico, or from any of the states of the Republic of Mexico having lawful authority to make grants of land," and pointed out the difference between this statute and those construed in the *Arredondo case*, 6 Pet. 691, and the act of March 3, 1851, c. 41, 9 Stat. 631, considered in the *Peralta case*, 19 How. 343. We held that under the act of 1891 the court must be satisfied, not merely of the regularity in the form of the proceedings, but also that the official body or person assuming to make the grant was vested with authority, or that the exercise of power, if unwarranted, was subsequently lawfully ratified. We are not to presume that, because certain officials made a grant, therefore it was the act of the Mexican government and to be sustained. It must appear that the officials did have the power, and we are not justified in resting upon any legal presumption of the existence of power from the fact of its exercise.

While this is true, yet when the statutes and ordinances defining the powers and duties of an officer are somewhat indefinite and general in their terms, and that officer was in the habit of exercising the same power as was exercised in the case presented, and such exercise of power was not questioned by the authorities of Mexico, and grants purporting to have been made by him were never challenged, there is reason to believe that the true construction of the statutes or ordinances supports the existence of the power. Cases now before us disclose that about the time the intendant acted in this case similar action was taken by him in respect to other applications for the purchase of land; that through a series of years, from 1824 downward, the commissary general, the officer created by the act of September 21, 1824, recognized his acts

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as creating equitable obligations on the part of the government, and attempted to consummate the sales by papers passing the legal title; that the title papers thus executed were duly placed of record in the proper office, and fail to show that subsequently thereto the Mexican government took any steps to question the title or disturb the possession. While this may not be conclusive as to the validity of the grants and the existence of the power exercised by the intendant, it certainly is persuasive, and we should not be justified in lightly concluding that he did not possess the power which he was in the habit of exercising.

What powers did the intendant possess at the time this sale is alleged to have taken place? It is conceded by the government that by the ordinance of December 4, 1786, (at which time Mexico was a province of Spain,) the intendants had full authority in reference to the sale of lands. Article 81 of that ordinance (Reynolds' Spanish and Mexican Land Laws, p. 60) is as follows:

"ART. 81. The intendants shall also be judges, with exclusive jurisdiction over all matters and questions that arise in the provinces of their districts in relation to the sale, composition and distribution of crown and seigniorial lands. The holders thereof, and those who seek new grants of the same, shall set up their rights and make their applications to said intendants, who, after the matter has been duly examined into by an attorney of my royal treasury, appointed by themselves, shall take action thereon, in accordance with law, and in conjunction with their ordinary legal advisers. They shall admit appeals to the superior board of the treasury, or, should the parties in interest fail to employ that recourse, submit a report thereto, together with the original proceedings, when they consider them in condition to issue the title. The board shall, after examination thereof, return them, either for issue of title, if no correction is necessary, or, before doing so, for such other proceedings as in the opinion of the board are required, with the necessary instructions. In the meantime, and without further delay, the necessary confirmation may be made, which said superior board shall issue at the proper time, proceeding

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in this matter, as also the intendants, their deputies and others, in accordance with the requirements of the royal instructions of October 15, 1754, in so far as they do not conflict with these, without losing sight of the wise provisions of the laws therein cited and of Law 9, Title XII, Book IV."

It is, however, contended that prior to the transfer of title in this case this authority was taken away from the intendant. In support of this contention four matters are referred to by counsel: 1. The adoption of the constitution of March 18, 1812, and the promulgation of the law of January 4, 1813. 2. The resolution of the council of the Indies, before a full board at Madrid, December, 23, 1818. 3. The decrees of Ferdinand VII, reëstablishing the constitution of 1812, and convoking the Cortes, March 6, 7, 9, 1820. 4. The imperial colonization law of January 4, 1823.

Of these in their order, though it may be well here to note that the colonization law was not passed until after the sale in controversy had taken place.

On March 18, 1812, in the midst of troublous times in Spain, a constitution (Reynolds, p. 79) was adopted, and by it and the law of the Cortes, of January 4, 1813, (Reynolds, p. 83,) it is insisted that a different mode of disposing of the public lands was created. As, however, this continued in force only until May 4, 1814, when the king, Ferdinand VII, returned to the throne and issued a decree refusing to recognize the existing order of things and declaring the constitution of 1812 revoked, it would seem that the powers theretofore vested in the intendants were reëstablished. Indeed, on December 28, 1814, the king issued a royal cédula or edict, the ninth article of which is as follows (2 White's New Recopilacion, p. 168):

"The governor intendants shall resume all the powers appertaining to them before the promulgation of the constitution, so called; and shall consequently exercise said powers, as well in matters of government as in those of economy and litigation relating to the royal treasury, agreeably to the laws and ordinances respecting intendants."

Clearly thereafter the intendants had the powers given

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them by the ordinance of 1786. *Sabariego v. Maverick*, 124 U. S. 261.

On December 23, 1818, a resolution passed by the council of the Indies, at Madrid, and approved by the king, provided that all business pertaining to the alienation of lands in New Spain should belong to the department of the office of the treasury of the Indies at Madrid. Hall's Mexican Law, p. 76, sec. 188. In March, 1820, Ferdinand VII, under pressure from the people, adopted the constitution of 1812 and took an oath to support it. Did this resolution of December, 1818, or this reëstablishment of the constitution, or both together, put an end to the power of the intendants in respect to the sale of lands? Clearly the resolution of December, 1818, would not have that effect. The mere placing of the control over land matters in a particular government department at Madrid would in no manner affect the powers of local officers until and unless such department should so order, and there is no suggestion that any orders to that effect were ever issued. The resolution would have no more effect on the powers of the local officers than would a transfer of the land department of this Government from the control of the Secretary of the Interior to that of the Secretary of the Treasury. The local officers would simply have to respond to new superiors, and that is all.

Nor do we think that the reëstablishment of the Constitution even if the reëstablishment of that instrument carried with it the reenactment of the law of the Cortes of January 4, 1813, put an end to the office of intendant, or wholly abrogated his powers. So far as the act of January 4, 1813, is concerned, while it did authorize the distribution of part of the lands on account of military service, it still provided that half of the public and crown lands should be reserved to serve as a mortgage for the payment of the national debt, and recognized the disposition of such lands by the "provincial deputation," as it was called. Turning to the constitution we find the following provisions in chapter 2, article 324: "The political government of the provinces shall reside in the superior chief appointed by the king in each one of them."

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Article 325: "In each province there shall be a deputation called provincial, to promote its prosperity, presided over by the superior chief." Article 326: "This deputation shall be composed of the president, the intendant and seven members elected in the manner that shall be stated." While it may be that under the terms of these and subsequent articles the general control over the affairs of a province was vested in the provincial deputation, of which deputation the intendant was to be one member, we find nothing in them that either put an end to the office of intendant or had any other effect than to subject his actions to the control of the provincial deputation. The question is not what the provincial deputation when organized would do, but whether the mere reestablishment of the constitution, which provided for a provincial deputation, operated, before any action taken under it, to put an end to the powers theretofore vested in the intendants. It may well be that in thus arranging for a new system of control, without abolishing the office of intendant, but on the contrary, in terms recognizing its continuance, the purpose was not to create an interim in which no person should have power to act for the government in the alienation of its lands, but that the intendant should continue to exercise the powers he had theretofore exercised until the king should appoint a superior chief, and the other members of the deputation be elected.

The very next year witnessed the separation of Mexico from the kingdom of Spain. On February 24, 1821, a declaration of independence was made in the form known as the plan of Iguala, and this declaration of independence was made good by the surrender of the City of Mexico on September 27, 1821. The fifteenth section of this plan provided that "the junta will take care that all the revenues of departments of the state remain without any alteration whatever, and all the employés, political, ecclesiastical, civil and military, will remain in the same state in which they exist to-day."

On August 24, 1821, what is known as the treaty of Cordoba was signed at that village by General Iturbide, for Mexico, and Viceroy O'Donoju, for Spain, the latter, how-

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ever, having no previous authority from Spain, and this treaty was by Spain afterwards repudiated. This treaty provided that "the provisional junta was to govern for the time being in conformity with existing laws in everything not opposed to the plan of Iguala, and until the Cortes shall form the constitution of the state." Immediately after the surrender of the City of Mexico a provisional council or junta, consisting of thirty-six members, was created under the plan of Iguala, which assumed the control of the government, and on October 5, 1821, this provisional council promulgated the following order (Reynolds, p. 95):

"The sovereign provisional council of government of the empire of Mexico, considering that from the moment it solemnly declared its independence from Spain all authority for the exercise of the administration of justice and other public functions should emanate from said empire, has seen fit to habilitate and confirm all authorities as they now are, in conformity with the plan of Iguala and the treaty of the village of Cordoba, for the purpose of legalizing the exercise of their respective functions."

That the office of intendant was one of those continued in existence by this order is clearly shown by the decree of September 21, 1824, creating the office of commissary general. (Reynolds, p. 123.) Its first two articles are:

"ART. 1. So far as concerns the federation, the officers of general and local depositories, and all revenue employés that have been retained by the federation, are discontinued.

"ART. 2. From the intendants and other discontinued officers the government shall appoint, in each state where it appears necessary, a commissary general for the different branches of the exchequer, public credit and war."

Prior thereto, and on October 24, 1821, the provisional council passed an order declaring that the office of superintendent general of the treasury was not necessary, and added, "and in consequence, has decided that the duties of the superintendency be performed, as your excellency proposed in your said report, by the directories general of the revenues, the officers of the treasury and intendants, in the

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cases and matters that severally belong to them, in conformity with their ordinances, without any variation in them." (Reynolds, p. 96.) On January 16, 1822, it ordered that, "until the next august national congress fixes the system of public revenues, the intendants should remain as they are, except those who are reappointed and have, in their former offices, had a higher salary than that the intendants of Sonora and Pueblo now have." (Reynolds, p. 98.) And on February 2, 1822, it directed that "a report of the receipts of the treasuries since independence was sworn to be forwarded by the intendancies of the empire; and a statement of the receipts and disbursements of the last fifteen days since the 24th of December." (Reynolds, p. 99.)

So that long after the sale here in question was made the government of Mexico recognized the office of intendant as continuing, and no statute or ordinance appears which in terms at least took away from that officer all control over the sales of public lands.

It is contended that the mere change of sovereignty revoked all authority to make sales of the public lands, and *United States v. Vallejo*, 1 Black, 541, is cited, in which it was held that the decrees of the Spanish Cortes of 1813, in relation to the disposition of the crown lands, was inapplicable to the state of things which existed in Mexico after the revolution of 1820, and could not have been continued in force there, unless expressly recognized by the Mexican congress.

And also *More v. Steinbach*, 127 U. S. 70, 81, in which it was observed that —

"The doctrine . . . that the laws of a conquered or ceded country, except so far as they may affect the political institutions of the new sovereign, remain in force after the conquest or cession until changed by him, does not aid their defence. That doctrine has no application to laws authorizing the alienation of any portions of the public domain, or to officers charged under the former government with that power. No proceedings affecting the rights of the new sovereign over public property can be taken except in pursuance of his authority on the subject."

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It is doubtless true that a change of sovereignty implies a revocation of the authority vested by the prior sovereign in local officers to dispose of the public lands. And yet we think that rule is not controlling in this case, for the new sovereign made an order continuing the functions of the local officers, and one of those local officers making a sale in accordance with the provisions of the prior laws caused the money received therefrom to be paid into the treasury of the new sovereign, and that sovereign never returned the money thus received, nor challenged the validity of the sale thus made. This is not a case in which the local officers attempted to dispose of public lands in satisfaction of obligations created by the former sovereign, but one in which a sale was made for money, and that money passed into the treasury of the new sovereign.

Again, the original ordinance of intendants provided for an examination of the proceedings by "an attorney of my royal treasury." The proceedings had in this case were referred to the promoter fiscal, such being the name of the legal adviser of the treasury department, who approved them. So we have presented the case of a sale made by an officer who at one time undoubtedly had power to make a sale, who was directed by the original ordinance creating his office and establishing his powers to refer his proceedings to the legal adviser, a reference of the proceedings had by him to such legal adviser and a decision of such adviser that the proceedings were regular and that the sale ought to be consummated. Under those circumstances it is not inappropriate to refer to what was said in *Mitchel v. United States*, 9 Pet. 711, 742, in reference to the validity of a grant in Florida:

"It was done also on the deliberate advice of an officer responsible to the crown, which makes the presumption very strong, if not irresistible, that everything preceding it had been lawfully and rightfully done."

Again, it must be noticed that according to the report of the proceedings the money received for this land was paid into the public treasury, the entry on the account book being in these words:

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"Charged one hundred and sixteen dollars, two reales and five grains paid by Don Jose Maria Serrano in the name of and as attorney for Don Leon Herreros, resident of the company of Pimas at Tubac, in the following manner: One hundred and five dollars as the principal value for which was auctioned by this intendencia one sitio and three quarters of another of lands for raising cattle contained in the place of San Jose de Sonoita, situated in the jurisdiction of said company; six dollars, one real and seven grains for the said half annual charge and eighteen per cent for transfer to Spain; two dollars, ten grains for the two per cent as a general charge, and the three dollars as dues for the extinguished account, as is explained by the order of the intendencia marked No. 32, \$116 2r. 5g.

"ESCALANTE.

"FUENTE.

"JOSE MARIA SERRANO."

It would seem not unwarranted and unreasonable to refer to the familiar rule that where an agent, even without express authority makes a sale of the property of his principal, and the latter with full knowledge receives the money paid on account thereof, his retention of the purchase price is equivalent to a ratification of the sale. We do not mean, however, to state this as a general proposition controlling all municipal and governmental transactions, but only as one of the circumstances tending to strengthen the conclusion that these acts of the intendant were not mere usurpations of authority, but were in the discharge of duties and the exercise of powers conceded to belong to his office.

Passing beyond the action of the intendant, we find that in 1825 the commissary general executed title papers, thereby ratifying the sale made by the intendant four years before. We have heretofore quoted articles 1 and 2 of the act of September 21, 1824, creating such office. We now quote articles 3, 4 and 5:

"ART. 3. These commissaries shall be, in the state or states and territories of their demarcation, head officers of all

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branches of the exchequer. Consequently, they are responsible for the prompt execution of the laws that govern their administration, and all employés thereof shall be subordinate to them.

"ART. 4. They shall collect and disburse, under the laws and orders of the government, the proceeds from the revenues and the contingents of the states.

"ART. 5. The revenue on powder, salt deposits, the proceeds from the revenue on tobacco that belong to the federation, national properties and vacant lands (cascos), contingents, customs, tolls and all the branches pertaining to the public credit, shall be administered directly by the commissary. The revenue on tobacco in the places where raised, that from the maritime customs, from the mail and lotteries, shall continue under their special administration, subordinate in all respects to the commissaries."

Obviously these articles gave to this newly created officer the fullest powers in respect to the national revenues. When an office is created with such large powers as these and the incumbent thereof reviewing proceedings theretofore had by prior representatives of the government, and finding that a sale made by one of such prior officers has resulted in the payment of the cash proceeds thereof into the public treasury, confirms his action, ratifies his proceedings and issues appropriate title papers therefor, it would seem that any doubts which might hang over the power of the prior officer were put at rest, and that thereafter no question could be raised as to the validity of the sale.

And, indeed, such seems to have been the assumption on the part of the government of Mexico, for there is no suggestion that from the time of the execution of these title papers in 1825 up to the date of the cession, 1853, the government ever raised any question as to the validity of the sale or sought to disturb the possession of the grantee. While of course time does not run against the government, and no prescription, perhaps, may be affirmed in favor of the validity of this grant, yet the inaction of the government during these many years is very persuasive, not merely that it considered

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that the intendant had the power to make the sale, but that in fact he did have such power. These considerations lead us to the conclusion that this grant was one which, at the time of the cession in 1853, was recognized by the government of Mexico as valid, and therefore one which it was the duty of this Government to respect and enforce.

We pass, therefore, to a consideration of the second question, and that is, the extent of the grant. It is claimed by the appellant that the grant should be sustained to the extent of the outboundaries named in the survey. He insists that the accepted rule of the common law is, that metes and bounds control area; that a survey was in fact made and possession given according to such survey, and that although it now turns out that the area within the survey is largely in excess of the amount applied and paid for, the grant must be held effective for the area within the survey.

We had occasion to examine this question in *Ainsa v. United States*, 161 U. S. 208, 229, and there said:

"So monuments control courses and distances, and courses and distances control quantity, but where there is uncertainty in specific description, the quantity named may be of decisive weight, and necessarily so if the intention to convey only so much and no more is plain."

We think this case comes within the rule thus stated. The defendant, in his answer, alleges that the grant comprises 12,147.69 acres, while counsel for the Government say that the measurements given by the surveyor make the area 22,925.87 acres. The amount of land appraised, advertised, sold and auctioned off was one and three quarter sitios (7591.61 acres). While, of course, any slight discrepancy between the area of the survey and that ostensibly sold might be ignored, yet the difference between the amount which was understood to have been sold and the amount now found to be within the limits of the survey is so great as to suggest the propriety of the application of the rule laid down in *Ainsa v. United States*, *supra*. There can be no doubt from the record of the proceedings that one and three quarter sitios was all that the purchaser supposed he had purchased, all

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that the intendant supposed he had sold, and all that was advertised or paid for. The original petition, after stating that there was a place known as San Jose de Sonoita, declared that the petitioner registered "in the aforesaid place two sitios of land," which he desired to have surveyed, and to pay therefor the just price at which it might be valued. The petition, therefore, was not for any tract known by a given name, but for a certain amount of land in such place. The report of the survey is very suggestive. We quote from it as follows :

"In the ancient abandoned place of San Jose de Sonoita, on the 26th day of the month of June, 1821, I, the said lieutenant commander and subdelegate of the military post and company of Tubac and its jurisdiction, in order to make the survey of the land denounced by Don Leon Herreros of this vicinity, delivered to the appointed officials a well-twisted and stretched cord, and in my presence was delivered to them a castilian vara, on which cord were measured and counted fifty regulation varas, and this being done, at each were tied poles, and standing on the spot assigned by the claimant as the centre, which was in the very walls of the already mentioned Sonoita, there were measured in a northeasterly direction sixty-three cords, which ended at the foot of some low hills, a little ahead of a spring—a chain of mountains of a valley which goes on and turns to the east, where was placed a heap of stones as a monument; and being about to return to the centre, the claimant expressed a desire that the survey should be continued down the canon until the two sitios should be completed, that on each side we should survey to him only twenty-five cords, because if the survey should extend further, by reason of the broken-up condition of the country and the rocky hills in sight, such land would be useless to him, saying, at the same time, that, continuing the measurement along the canon (because it was impossible to go in any other direction on account of the roughness of the ground), by reason of the many turns that had to be made, so many cords should be deducted from the total number measured, as would be calculated to result in excess of the

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real length measured, taken on a straight line, and considering his demand reasonable I ordered the continuation of the survey as follows, to wit.

* * * * *

"And in view of the suggestion made by the claimant to reduce the number of cords actually measured so much as might be calculated to be in fact in excess of the true measurement by reason of the many turns of the canon over which the survey was made, as it could not be carried on straight, I appointed for that purpose Lieutenant Don Manuel Leon and the citizen Don Jose Ma. Sotelo, who were unanimously of the opinion to deduct twenty-five cords out of the three hundred and twelve cords measured in the last survey down the canon, the claimant consenting thereto as just; the survey was calculated to be two hundred and eighty-seven cords, with which this survey was finished, resulting from it one sitio and three fourths of another sitio, registered by Don Leon Herreros for raising stock and for farming purposes."

The appraisers reported as follows:

"In virtue thereof they said that according to and because of the examination they had made and being aware of the existing regulations on the subject, the price should be fixed at, and they fixed it at, sixty dollars for each sitio, because they have running water and several banks of arable land which can be made use of by cultivation."

The direction for the almoneda or offer of sale was of the lands "composed of one sitio and three fourths of another." The first almoneda was of lands "comprising one sitio and three fourths of another, . . . and appraised in the sum of one hundred and five dollars, at the rate of sixty dollars per sitio." The property put up for sale was lands "comprising one sitio and three fourths of another, . . . appraised at one hundred and five dollars, at the rate of sixty dollars each sitio." The report of the promoter fiscal opens with this statement:

"The promoter fiscal of this treasury has examined carefully the expediente of the lands surveyed in favor of Don Leon Herreros, resident of the military post of Tubac, by the Commissioner Don Elias Ygnacio Gonzales, lieutenant com-

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mander of the post, in the place called San Jose de Sonoita, in that jurisdiction, from which resulted one sitio and three fourths of another, for raising stock and horses, valued at sixty dollars each sitio, which sums up one hundred and five dollars, as it has running water and some pieces of land fit for cultivation."

Subsequently to this report the direction was made for three public auctions, which were made, and the record of the first auction, the others being similar, is in these words :

"1st auction. At the city of Arizpe, on the 8th day of the month of November, 1821, there convened as a board of auction the intendente as president and the members composing the board, in order to make the first auction of the lands referred to in this expediente. They caused many persons to collect by the beating of drums at the office of the intendencia, and in their presence they made the crier, Loreto Salcido, announce, as he did in a loud and clear voice, saying: 'There is to be auctioned at this board of auction one sitio and three fourths of another of public lands, for raising cattle, comprised in the place of San Jose de Sonoita, in the jurisdiction of the military post of Tubac, surveyed in favor of Don Leon Herberos, resident of the same, and appraised in the sum of one hundred and five dollars, at the rate of sixty dollars per sitio; whoever wants to make a bid on it, let him do so before this board, which will admit it if done properly; with the understanding that at the third and last auction, which will take place the day after to-morrow, the property will be sold to the highest bidder.'"

The payment was, as appears from the entry in the treasury office, heretofore quoted, of "one hundred and five dollars as the principal value for which was auctioned by this intendencia one sitio and three quarters of another of lands for raising cattle, contained in the place of San Jose de Sonoita." So, notwithstanding the fact that as shown by the report of the surveyors, a survey was made, all the proceedings from the commencement to the close contemplated, not the purchase of a given tract of land, but a certain amount of land in the place of San Jose de Sonoita. Every consideration of equity,

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therefore, demands that the title of the purchaser should be confined to the one and three fourths sitios for which he paid.

As indicated in *Ainsa v. United States*, *supra*, too much stress cannot be laid on the technical rules of the common law in reference to the dominance of courses and distances over area. It is a matter of common knowledge that in this part of the country large areas beyond the immediate reach of water courses or springs were arid; that purchases were of lands so watered or so susceptible of watering that crops could be expected therefrom, or pasturage furnished for stock. The land beyond the reach of these water supplies was deemed of little value, and hence slight attention was paid to it. Every purchase therefore must be considered as dominated by this important and single fact. Rude methods of measurement were resorted to. As shown in the report of the survey in this case mere estimates were relied upon. Doubtless this carelessness was partly owing to the fact disclosed in *Ainsa v. United States*, that any overplus above the actual amount paid for still remained the property of the government, payment for which could be compelled of the locator, or, on his failure to make such payment, could be appropriated by any third party desiring to purchase. The fact that during these years no challenge was made of the overplus is not important. The government was indifferent. Its rights could be enforced at its leisure, and no individual cared to purchase any surplus of arid lands. The presumption which might obtain in other places from the inaction of the government, the failure of any individual to assert a claim to the overplus, is in respect to the lands in this territory of no significance. Who there would care to question the right of a locator along a waterway to any overplus of arid lands? Such overplus was of no value, and no third party would ever care to challenge the locator's right to this overplus, and the government, like the individual, was also indifferent. So the silence and inaction of the government and third parties are not strange, and create no presumption in favor of the validity of the grant to the extent of the survey.

Sustaining the validity of the grant to the extent of the

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land paid for is but carrying out the spirit of the treaty, the obligations of international justice and the duties imposed by the act creating the Court of Private Land Claims. Article 8 of the treaty of Guadalupe Hidalgo provided in reference to the ceded territory that "Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican republic, retaining the property which they possess in the said territories, or disposing thereof, and removing the proceeds wherever they please, without their being subjected, on this account, to any contribution, tax or charge whatever," and that "in the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected" 9 Stat. 929; and these stipulations were reaffirmed in Article 5 of the Gadsden treaty. 10 Stat. 1035. Article 6 of that treaty, which placed a limitation, provided "that no grants of land within the territory ceded . . . will be considered valid or be recognized by the United States, or will any grants made previously be respected or be considered as obligatory, which have not been located and duly recorded in the archives of Mexico." But this limitation is not to be understood as denying the obligations imposed by the rules of international law in the case of cession of territory, but simply as defining specifically the evidences of title which are to be recognized. The spirit of the treaty is fully carried out when the amount of land petitioned and paid for is secured to the grantee or his successors in interest. This Government promised to inviolably respect the property of Mexicans. That means the property as it then was, and does not imply any addition to it. The cession did not increase rights. That which was beyond challenge before remained so after. That which was subject to challenge before did not become a vested right after. No duty rests on this Government to recognize the validity of a grant to any area of greater extent than was recognized by the government of Mexico. If that government had a right, as we have seen in *Ainsa v. United States*

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it had, to compel payment for an overplus or resell such overplus to a third party, then this Government is under no moral or legal obligations to consider such overplus as granted, but may justly and equitably treat the grant as limited to the area purchased and paid for.

It may be said that to consider the tract granted as one not extending to the limits of the outboundaries of the survey is to hold that the tract granted was not located, and therefore within the terms of the Gadsden treaty, not to be recognized by this Government, as suggested in *Ainsa v. United States*. In that case it appeared that while the outboundaries of the survey extended into the territory ceded by Mexico to the United States, the grantee had taken and was in possession of land still remaining within the limits of Mexico, to the full extent which he had purchased and paid for, and therefore no legal or equitable claim existed against the United States in reference to land within the ceded territory.

It is also undoubtedly true, as disclosed in that case, that where there is a mere grant of a certain number of acres within specified outboundaries there may be such indefiniteness as to prevent a court from declaring the true location of the granted lands. And yet it is also true that there may be disclosed by the survey or other proceedings that which will enable a court of equity to determine with reasonable certainty what lands were intended to be granted and the title to which should be established. It must be remembered in this connection that by section 7 of the act creating the Court of Private Land Claims, it is provided "that all proceedings subsequent to the filing of said petition shall be conducted as near as may be according to the practice of the courts of equity of the United States." Therefore in an investigation of this kind that court is not limited to the dry, technical rules of a court of law, but may inquire and establish that which equitably was the land granted by the government of Mexico. It was doubtless the purpose of Congress, by this enactment, to provide a tribunal which should examine all claims and titles, and that should, so far as was practicable in conformance with equitable rules, finally settle and determine the rights of all claim-

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ants. It will be unnecessarily limiting its powers to hold that it can act only when the grant to the full outboundaries of the survey is valid and is powerless when a tract within those outboundaries was granted. Many things may exist by which the real tract granted can be established. In the case before us, if it be possible to locate the central point from which according to the report the survey was made (and we judge from the testimony that it is possible) the actual grant can be established by reducing each measurement therefrom to such an extent as to make the area that of the tract purchased and paid for. If the outboundaries disclose a square or any rectangular figure, the excess of area suggests simply a carelessness of measurement, and can be corrected by a proportionate reduction in each direction. In other cases, the location of the waterway, the configuration of the ground, may be such as to enable a court of equity by its commissioner or master to determine exactly what was intended to pass under the grant. We do not mean to anticipate all the questions that may arise. We simply hold that the mere fact that the grant is narrower than the limits of the outboundaries does not prevent the Court of Private Land Claims from determining through the aid of a commissioner, surveyor or master exactly what equitably did pass under the grant. It is enough for this case to hold that the powers of the Court of Private Land Claims are not narrow and restricted, and that, when it finds that there is a valid grant for a certain number of acres within the outboundaries of a larger tract, it may inquire, and, if it finds sufficient reasons for determining the true boundaries of the tract that was granted, it can so prescribe them, and sustain the claim to that extent, referring to the Land Department the final and absolute surveys thereof.

In view of these considerations, we are of opinion that this grant should be sustained to the amount of one and three fourths sitios, and the judgment of the Court of Private Land Claims is reversed and the case remanded to that tribunal, with directions to examine and decide whether there be sufficient facts to enable it to determine the true boundaries of the one and three fourths sitios.